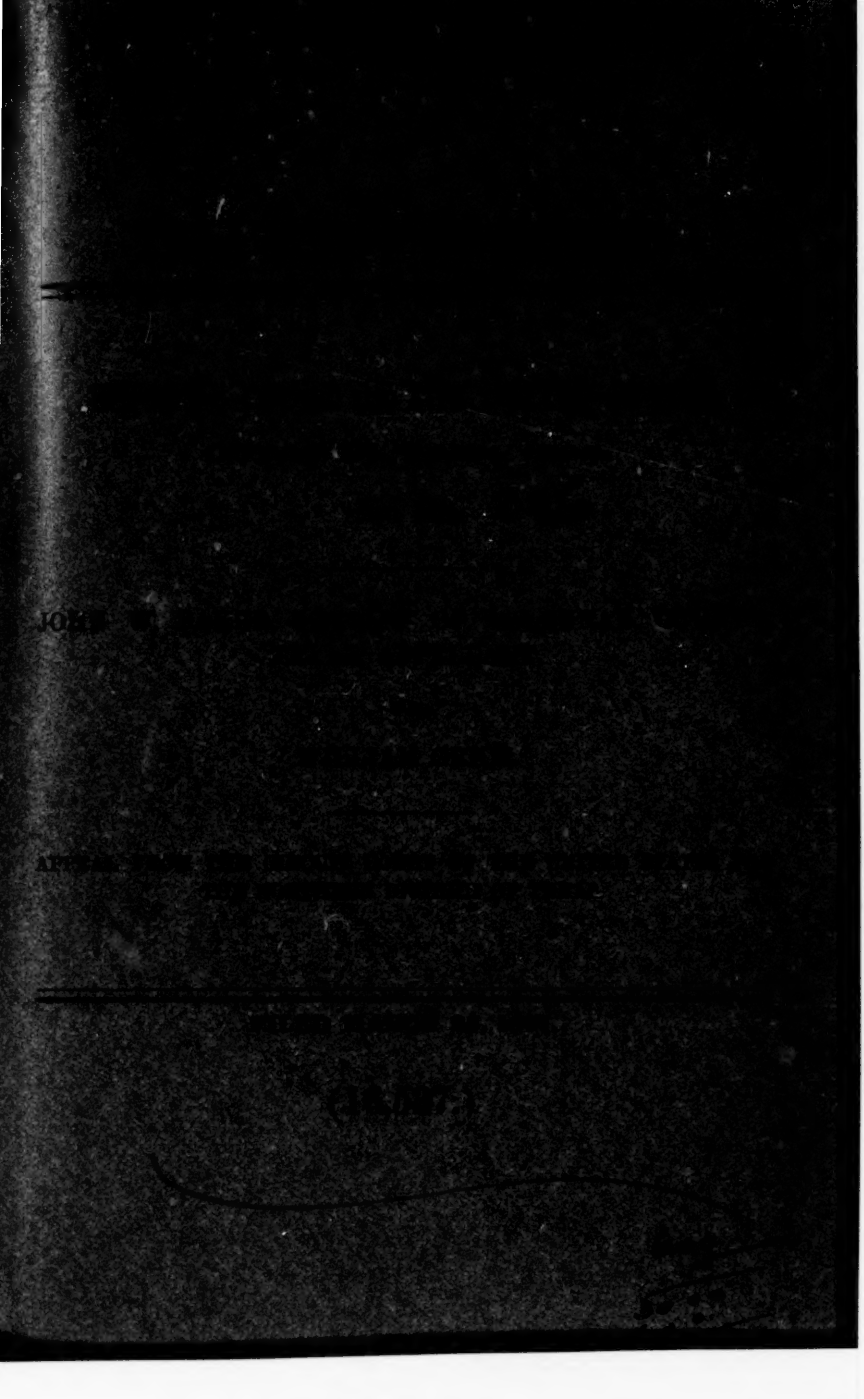

(16,537.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 758.

JOHN W. BAKER, SHERIFF OF McLENNAN COUNTY, TEXAS, APPELLANT,

vs.

WILLIAM GRICE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Caption	1	1
Order designating Judge Swayne to hold court	2	1
Petition for writ of *habeas corpus*	3	2
Exhibits—Indictment in State court in Hathaway case	12	8
Judgment in State court in Hathaway case	25	18
Sentence in State court in Hathaway case	27	19
Brief of appellant in Hathaway case	29	20
Speech of Mr. Taylor, county attorney, in Hathaway case	59	41
Opinion of court of criminal appeals in Hathaway case	75	53
Writ of *habeas corpus*	88	65
Marshal's return of service	89	66
Return of sheriff to writ of *habeas corpus*	90	66
Order for writ of *habeas corpus* to issue	91	67
Order setting cause for hearing and admitting defendant to bail	91	67
Bail bond	91	67
Order to transfer cause to Dallas	92	68

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 26, 1897.

	Original.	Print.
Clerk's certificate to orders made at Waco	92	68
Amended return of sheriff	93	68
Exhibit A—Docket entries in district court of McLennan county in case of Texas *vs.* Rockefeller *et al.*, No. 871	96	70
B—Affidavit of Charles Banister	97	71
Affidavit of N. S. Hill	98	71
Replication	99	72
Statement of agricultural products and their value produced in Texas in the year 1894	101	74
Statement of the number of farmers, overseers, agricultural laborers, stock-raisers, herders and drovers, and laborers not specified in the State of Texas according to the census returns of 1890	102	74
Opinion	105	75
Order discharging petitioner	110	101
Bill of exceptions	111	101
Statement of evidence offered, &c	111	101
Judge's certificate to bill of exceptions	113	103
Recognizance	114	103
Petition for appeal	115	103
Waiver of citation	115	104
Order allowing appeal	115	104
Appeal bond	116	104
Assignment of errors	118	105
Writ of error	120	106
Clerk's certificate	121	107
Stipulation to print one record, and that the other three cases (Nos. 759, 760, and 761) abide decision therein	122	108

1 *Caption.*

Be it remembered that at a term of the circuit court of the United States in the fifth circuit thereof and in and for the northern district of Texas, at Dallas, begun and holden at Dallas, Texas, on the 11th day of January, A. D. 1897, and which term adjourned on the 27th day of February, A. D. 1897—present and presiding, the Honorable Charles Swayne, judge of the United States district court for the northern district of Florida, by virtue of the designation and appointment by the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, as hereafter shown—during the trial of the cause hereinafter named the following proceedings were had and the following cause came on for trial and was tried, to wit:

Ex Parte WILLIAM GRICE, Relator; JOHN W. BAKER, Sheriff, Respondent. No. 2062.

2 *Designation of Hon. Charles Swayne.*

THE UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

Whereas in my opinion the accumulation of business in the district and circuit courts of the United States for the northern district of Texas requires the designation and appointment of another judge in aid of the judge of said district:

Now, therefore, I, Andrew P. McCormick, United States circuit judge for the fifth judicial circuit, in accordance with the provisions of section 592 of the Revised Statutes of the United States, do hereby designate and appoint the Honorable Charles Swayne United States district judge for the northern district of Florida, in aid of the Honorable John B. Rector, United States district judge for the northern district of Texas, to hold the terms of said courts at Waco, Texas, beginning on the 3rd Monday of November, 1896, and the terms of said courts at Dallas, Texas, beginning on the 2nd Monday in January, 1897, and to have and exercise in the northern district of Texas during the time of this designation the same powers that are vested in the judge thereof.

Witness my hand, at office, in Dallas, Texas, this the 4th day of November, A. D. 1896.

A. P. McCORMICK,
U. S. Circuit Judge.

3 *Petition for Writ of Habeas Corpus.*

Filed Dec. 9, 1896; Dec. 18, 1896.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

To the honorable the judges of said court:

Your petitioner, William Grice, who resides at Dallas, in the county of Dallas and State of Texas, comes and shows to the court as follows:

1. That he, your petitioner, is a citizen of the United States and resides, as aforesaid, in the county of Dallas and State of Texas.

2. That he, your petitioner, is unlawfully restrained in his liberty by one John W. Baker, who is the sheriff of McLennan county, Texas, and he is now held in the custody of the said John W. Baker, sheriff as aforesaid, he, your petitioner, having been surrendered by his sureties under the recognizance hereinafter mentioned. Petitioner is informed and believes, and so avers the fact to be, that he, your petitioner, is detained by the said John W. Baker by virtue of a capias issuing out of the district court of the 54th judicial district of the State of Texas, at Waco, upon an indictment preferred in said district court against your petitioner and other citizens of the United States on, to wit, the 21st day of November, 1894, said indictment and prosecution being numbered on the criminal docket of said district court for said 54th judicial district as number 871 and entitled The State of Texas *vs.* John D. Rockefeller *et al.* Said indictment charges that John D. Rockefeller, Henry M. Flagler, John D. Archbold, Benjamin Brewster, Henry H. Rogers, Westley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruett, E. Wells, William Grice, F. A. Austin, and E. T. Hathaway did unlawfully agree, combine, conspire, confederate, and engage with William E. Hawkins and divers other persons to the grand jurors unknown in McLennan county, Texas, in a conspiracy against trade, then and there and with the said William E. Hawkins and said other persons, creating a trust by a combination of their capital, skill, and acts with the said William E. Hawkins and other persons for the purpose, design, and effect to create and carry out restrictions in trade.

4 Petitioner shows that said indictment and prosecution has for its exclusive and only basis a certain act of the legislature of the State of Texas entitled "An act to define trusts, and to provide for penalties and punishment of corporations, firms, and associations of persons connected with them, and to promote free competition in the State of Texas," approved March 30th, 1889, which act is a public law of the State of Texas.

Petitioner shows that after said indictment was presented in open court a capias was duly issued thereon, and this defendant was arrested and brought to the city of Waco within a few days after the presentment of said indictment and appeared before said dis-

trict court of the 54th judicial district and entered into recognizance in terms of law conditioned for his appearance in said court from day to day and from term to term to answer said indictment; and thereafter, to wit, on the 2nd day of December, 1895, said case was regularly called for trial in said 54th judicial district, and thereupon, in accordance with the provisions of the Code of Criminal Procedure of the State of Texas, the defendants in said prosecution who has been arrested announced a severance, and immediately thereafter the said E. T. Hathaway, a codefendant, was placed on trial to answer the charges contained in said indictment.

Your petitioner further shows that the said E. T. Hathaway, codefendant, after announcement of ready for trial, and within the time prescribed by law governing such procedure, he, the said Hathaway, through his counsel, did file and present, in accordance with the provisions of the Code of Criminal Procedure of the State of Texas, his exceptions to the sufficiency and substance of the indictment preferred against him in the nature of a motion to quash as at common law, in which said codefendant, Hathaway, did set up and present the following causes and exceptions to said indictment, to wit:

1. Because it did not appear from the face of the indictment that any offense against the law had been committed.

2. Because the indictment showed upon its face that the district court of the 54th judicial district had no jurisdiction.

3. Because the act of the legislature of the State of Texas of March 30th, 1889, hereinbefore recited by its title, was violative of the Constitution of the United States, for the reason that said indictment discriminated between different classes of citizens of the United States, and denied to certain citizens the equal protection of the law, and proposed to deprive certain citizens of the United States of their liberty, property, privileges, and immunities in a way other than by due course of the law of the land.

4. Because said act of March 30th, 1889, was inoperative and void as to persons and citizens resident beyond the territorial limits of Texas.

5. Because said act did not prohibit a trust or declare it illegal, nor did it declare it an offense or propose to punish it, but merely defined it a trust without denouncing it, and was therefore not a penal law of the State of Texas, and no prosecution could be maintained under it.

6. Because said indictment showed upon its face that the parties presented were engaged in interstate commerce within the meaning of the Constitution and laws of the United States, and the district court of the 54th judicial district of Texas had no jurisdiction of any of such matters.

The court overruled these exceptions; to which the defendant Hathaway excepted; and thereafter the trial of the cause proceeded and continued until the 12th day of December, 1895, resulting in a verdict of guilty as to said codefendant, Hathaway, as charged in said indictment, and assessing his punishment at a fine of $50.00;

which verdict was received by the court and judgment duly entered thereon; and thereafter, to wit, on December 14th, 1895, the said Hathaway, codefendant, filed his motion for a new trial, setting up many grounds therefor, including the error of said district court in overruling his exceptions to said indictment, as hereinbefore set out; which motion was overruled by said district court on December 16th, 1895, and from said judgment of conviction the said Hathaway, codefendant, did perfect and prosecute, in terms of law, his appeal to the court of criminal appeals of the State of Texas, said last-named court then and there having final jurisdiction of criminal matter under the constitution and laws of the State of Texas, and he, the said Hathaway, did also file, in terms of law, his motion in arrest of judgment after conviction, setting up substantially the same grounds embraced in his exceptions *in limine* to said indictment; both of which motions for new trial and in
6 arrest of judgment were overruled by said district court; to which rulings of the court said codefendant, Hathaway, did duly except, and thereafter did perfect and prosecute his appeal to said court of criminal appeals of the State of Texas on various assignments of error, including the matters set up in said exceptions to the indictment and in said motion in arrest of judgment.

Your petitioner further shows to the court that under the provisions of the Code of Criminal Procedure of the State of Texas and of the criminal laws of the State of Texas, including the particular act aforesaid of 1889, said conviction of his codefendant, Hathaway, was for a felony, notwithstanding the pecuniary fine imposed, and, under said laws and provisions of said Code of Criminal Procedure, he, the said Hathaway, codefendant, was subjected to confinement in the common jail of McLennan county, Texas, pending the determination of said appeal. Your petitioner is advised and believes, and so avers, that said appeal on the part of his codefendant, Hathaway, was prosecuted with diligence and upon the assignments of error hereinbefore recited; that the transcript of the case on appeal was promptly filed in said court of criminal appeals of the State of Texas, sitting at Dallas, Texas, on, to wit, about the 10th day of January, 1896, and thereafter, to wit, about the 29th day of January, 1896, said appeal of said Hathaway, codefendant, was argued by counsel, both for himself, as appellant, and counsel for the State, and was submitted to said court of criminal appeals for consideration and determination; yet, notwithstanding the premises, said court of criminal appeals of the State of Texas failed to decide said appeal at its said Dallas term, which ended on the 31st day of March, 1896, and thereafter transferred said appeal for its determination to its Austin term, beginning on the first Monday in April, 1896, and there detained the same, without action on its part, until about the 24th day of June, 1896, leaving the said appellant, Hathaway, codefendant of this petitioner, in the meanwhile to be incarcerated in the common jail of McLennan county, Texas, in the companionship of thieves and felons of almost every character and description, whereupon, on or about the 24th day of June, 1896, said court of criminal appeals handed down its decision in said case, wherein it failed, de-

clined, and refused to decide or pass upon the exceptions to the sufficiency of the indictment aforesaid, which was duly raised in
7 the court below and duly presented to said court by assignment of error and by argument, and which involved the dearest rights not only of the said Hathaway, codefendant, who was appellant therein, but of your petitioner and all other good citizens of the United States, and which appeal called for an adjudication by said court of criminal appeals of the State of Texas upon said rights; but notwithstanding the premises, said court of criminal appeals decided said appeal upon a technical ground of pleading, holding in effect that because the indictment presented in said case had failed to charge the appellant Hathaway with having knowingly carried out, as agent, the stipulations, purposes, prices, rates, or orders under said alleged conspiracy, that thereafter the admission of evidence to that effect over the objection of said defendant, Hathaway, was unwarranted in law, and that said conviction was invalid; and thereupon, for said cause and without considering and determining the rights of said appellant, Hathaway, in any manner whatsoever as a citizen of the United States under the Constitution, it, said court of criminal appeals, reversed said judgment and remanded said cause for a trial *de novo* in said district court of the 54th judicial district of the State of Texas.

Your petitioner further shows that since the rendition of said judgment by said court of criminal appeals in said case two terms of said district court of the 54th judicial district have been held, one of which is now nearing its close, and while this petitioner, together with his codefendants, who have been arrested and placed under recognizance, have stood ready and anxious for trial upon said indictment, yet said case has not even been called by the court for trial, nor has said cause been set for trial, but the same has been permitted to remain upon the docket of said court, subjecting this petitioner and his codefendants not only to the shame and contumely of an indictment for felony, but denying to him and his codefendants the right to be heard in his defense in said court as a citizen of the United States, and whereby this petitioner as well *and* his codefendants are without remedy in the State courts of Texas for the assertion and vindication of their rights under the Constitution of the United States.

Your petitioner further shows that on, to wit, the 24th day
8 of November, 1896, his said codefendant, E. T. Hathaway, in terms of law and upon due showing made, did procure from this honorable court its most gracious writ of *habeas corpus* commanding and requiring John W. Baker, sheriff of McLennan county, who then and there had and held the custody of the body of the said E. T. Hathaway, codefendant, to produce before this honorable court the body of said Hathaway, and then and there certify to this honorable court the true cause of the detention by him, the said Baker, of the said Hathaway; which writ of *habeas corpus* was on the same day, to wit, on the 24th day of November, 1896, duly served upon the said John W. Baker, who made return on the same day to said writ of *habeas corpus* in this honorable

court, wherein he certified that he held *to* body of the said E. T. Hathaway, codefendant of your petitioner, by virtue of a capias issued upon the indictment hereinbefore described, presented in the 54th judicial district of Texas, at the time specified and named and in the suit therein named, to wit, The State of Texas *vs.* John D. Rockefeller *et al.*, the said Hathaway being indicted, as stated in his application for writ of *habeas corpus*, for violation of the anti-trust statute of the State of Texas, enacted and approved on March 30th, 1889, and thereupon it pleased this honorable court to set said cause for hearing in open court for the 7th day of December, 1896, and due notice was issued by this honorable court to the said respondent and to the prosecuting officers of the county of McLennan and State of Texas, duly advising them of such proceedings, it being here shown that the application of said E. T. Hathaway, codefendant, for a writ of *habeas corpus*, as aforesaid, was based exclusively upon the ground that he was a citizen of the United States, and that the law under which said indictment had been presented was violative of the Constitution of the United States in the particulars stated in his exceptions thereto filed upon the trial of said cause.

Your petitioner shows that the prosecuting officers of the State of Texas, in the district court of the 54th judicial district of said State, for reasons which are not known to your petitioner, but which reasons your petitioner believes were obviously for the purpose of defeating the jurisdiction of this honorable court in the premises upon said writ of *habeas corpus* and for the purpose of preventing
9 this honorable court from passing upon the constitutional rights of said E. T. Hathaway, codefendant of this petitioner, as a citizen of the United States, did, on, to wit, the 7th day of December, in open court, in said district court of the 54th judicial district, and with the consent of said court, dismiss the said indictment and prosecution as to the said E. T. Hathaway, codefendant, leaving the same to stand unimpaired and unaffected as to your petitioner and his other codefendants in said prosecution, and thereafter, on the same day, to wit, on the 7th day of December, 1896, the said John W. Baker, sheriff as aforesaid, respondent in the said writ of *habeas corpus*, did file his amended return to said writ, wherein he submitted to this honorable court a copy of said judgment of dismissal of said district court of the 54th judicial district of the State of Texas, and did further certify that, by reason of said dismissal, he, the said John W. Baker, as sheriff as aforesaid, had and claimed no further right or custody over the relator, E. T. Hathaway, and thereby and by reason thereof the jurisdiction of this honorable court in the premises was practically and substantially terminated, and this court was denied the privilege, under the law, of determining whether or not said act of the legislature of the State of Texas approved March 30th, 1889, and commonly known as the anti-trust act, was or was not violative of the Constitution of the United States and violative of the rights, privileges, and immunities of your petitioner, as well as his codefendants, under the Constitution of the United States and as citizens thereof.

Your petitioner is advised by his counsel, and upon the faith of

such advice avers, that said act of the legislature of the State of Texas of March 30th, 1889, is violative of the Constitution of the United States, and is therefore null and of no effect, for the reasons stated in said exceptions to said indictment hereinbefore recited; that said act discriminates between different classes of citizens of the United States and denies to certain citizens and classes of citizens the equal protection of the laws; that it deprives certain citizens and classes of citizens of the United States of their liberty, privileges, and immunities in a way other than by due course of the law of the land; that it otherwise attempts to justify the exercise of extraterritorial jurisdiction on the part of the State of Texas over citizens of the United States residing in other
10 States of the American Union and over acts done in other States of the American Union, and over which the State of Texas can have no possible jurisdiction, and that said acts and the indictment against your petitioner and others as aforesaid is an attempt to regulate and to interfere with interstate commerce, all in violation of the Constitution of the United States.

Your petitioner further shows to the court that by reason of the premises he is without remedy for the assertion and vindication of his rights as a citizen of the United States under the Constitution thereof; that he has stood under indictment for felony, charged with the violation of said alleged statute of the State of Texas, approved March 30th, 1889, for a period of two years without being afforded an opportunity by the State courts of Texas for the assertion of his rights as aforesaid as a citizen of the United States. Your petitioner believes, and so avers, that it is the purpose and intent of the prosecuting authorities of the State of Texas to prevent, if possible, any appeal by this petition to the courts of the United States for the vindication of his rights as aforesaid as a citizen. In view of the premises herein recited and without the interposition of this honorable court for his due protection and the due conservation of his rights as a citizen of the United States, he is practically remediless by appeal in regular course or otherwise.

And so your petitioner comes and prays this honorable court for its most gracious writ of *habeas corpus*, directed to the said John W. Baker, sheriff of McLennan county, Texas, as aforesaid, commanding him and requiring him, the said Baker, to produce before this court instanter the body of your petitioner, which he now unlawfully holds in his custody, to the end that the cause of detention of this petitioner may be promptly and summarily inquired into by this honorable court in accordance with the laws of the United States in such cases made and provided, and that it may please the court upon the hearing of said writ of *habeas corpus* to order and direct the discharge of this petitioner from the custody of said Baker, sheriff as aforesaid. Your petitioner filed herewith as exhibits the following papers, to wit:

1. Copy of the indictment preferred in said cause against your petitioner and others.

11 2. Copy of the judgment of the district court of the 54th judicial district adjudging his codefendant, Hathaway, guilty.

3. A copy of the brief and argument of your petitioner's codefendant, Hathaway, in the court of criminal appeals of the State of Texas.

4. A copy of the opinion of said court of criminal appeals of the State of Texas.

5. And petitioner refers to the records of this court in the matter of the application of *ex parte* E. T. Hathaway and prays that they may be considered a part and parcel of this petition, and your petitioner prays that these papers filed herewith may be read and considered by the court upon the final hearing hereof also as a part of this his petition for *habeas corpus*.

And, as in duty bound, your petitioner will ever pray.

WM. GRICE.

THE STATE OF TEXAS, }
McLennan County. }

Before me, Thos. P. Stone, a notary public in and for the county of McLennan and State of Texas, on this day personally appeared Wm. Grice, to me known to be the person whose name is signed to the foregoing petition and who, being by me duly sworn, does depose and say that he is acquainted with the contents of said petition for writ of *habeas corpus*, and that the allegations and statements in said petition contained are true.

WM. GRICE.

Sworn to and subscribed before me this the 9 day of December, A. D. 1896.

THOS. P. STONE,

[SEAL.] *Notary Public, McLennan County, Texas.*

The foregoing has the following endorsement, to wit:

Exhibit "A." No. 655. 2062. *Ex parte* Wm. Grice. Petition for writ of *habeas corpus*. Filed Dec. 9, 1896. J. H. Finks, clerk. Filed Dec. 18, 1896. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

12 *Indictment in the State Court.*

In the name and by the authority of the State of Texas:

The grand jurors for the county of McLennan, State of Texas, duly elected, tried, empannelled, sworn, and charged at a term of the district court of the fifty-fourth judicial district of Texas, in and for McLennan county, beginning on the 1st Monday of November, A. D. 1894, to enquire of and true presentment make of all offenses committed within the body of said county of McLennan, upon their oaths in said district court present—

That in said county of McLennan, State aforesaid, on or about October 1, 1894, John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbald, Benjamin Brewster, Henry H. Rogers, Wesley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruet, E. Wells, Wm. Grice, E. T. Hathaway, and F. A.

Austin did unlawfully agree, combine, conspire, confederate, and engage with William E. Hawkins and divers other persons to the grand jurors unknown in a conspiracy against trade then and there with the said William E. Hawkins and the said other persons, creating a trust by a combination of their capital, skill, and acts with the said William E. Hawkins and other persons, for the design, purpose, and effect to create and carry out restrictions in trade, to wit, in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils, the same being commercial commodities, by keeping the price of said oils at a certain price per gallon and at a certain price as otherwise sold, which price was far above the true market price of said oils, and for the purpose and effect to prevent competition in the manufacture, production, sale trade, and shipment of petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils, and to limit and reduce the production of said products, and to raise the price thereof above the true market value and cause the same to be purchased by the actual consumers at a great price above the true market value, and to prevent competition in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils, the same being commercial commodities and products of prime necessity to the people and for the purpose and effect to fix at a certain standard and figure the price of petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils, whereby the prices thereof were and are established and fixed in said county of McLennan at a fictitious value greatly in excess of the true market value; and the said John D. Rockefeller, Henry M. Flagler, William Rockefeller, Benjamin Brewster, John D. Archbald, Henry H. Rogers, Wesley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruet, E. Wells, Wm. Grice, E. T. Hathaway, and F. A. Austin did then and there unlawfully make and enter into a trust, combination, contract, agreement, obligation, and conspiracy with the said William E. Hawkins and other persons in said county, and all of said persons did agree, combine, conspire, confederate, and engage with each other and among themselves that they would not manufacture, produce, sell, trade, and ship petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils below a certain price, which price was and is far above the true market value of said commercial commodity, and that they would fix and keep the price of said oils in said county at a certain price and graduated figure, and that for the purpose of establishing and setting the prices of said oils among themselves and to preclude and destroy free and unrestricted competition in the manufacture, production, sale, trade, and shipment of said oils they agreed to pool, combine, and unite their interests in the manufacture, production, sale, trade, and shipment of said oils, so that the price thereof would be affected and fixed at a certain figure, against the peace and dignity of the State.

13

Second Count.

And the grand jurors aforesaid upon their oaths in said court do further present that John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbald, Benjamin Brewster, Henry H. Rogers, Wesley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruet, E. Wells, William Grice, E. T. Hathaway, F. A. Austin, and William E. Hawkins did unlawfully agree, combine, conspire, and confederate with
14 each other and among themselves in McLennan county, State of Texas, on or about the first day of October, 1894, in a conspiracy against trade, then and there creating a trust by a combination of their capital, skill, and acts with each other, for the purpose, design, and effect to carry out restrictions in trade, to wit, in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all products of petroleum, refined oils, illuminating oils, and lubricating oils, the same being articles of trade and commercial commodities, by keeping the price of said oils at a certain price as otherwise sold, which price was far above the true market price of said oils, and for the purpose and effect to prevent competition in the manufacture, sale, trade, and shipment of petroleum, petroleum oils, all their products, refined oils, illuminating oils, and lubricating oils, and to limit and reduce the production of said products and to raise the price thereof above the true market value, and to cause the same to be purchased by the actual consumers at a great price, and to prevent competition in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all their products, refined oils, illuminating oils, and lubricating oils, the same being commercial commodities and products of prime necessity to the people, and for the purpose and effect to fix at a certain standard and figure the price of petroleum, petroleum oils, all their products, refined oils, illuminating oils, and lubricating oils, whereby the prices thereof were and are established and fixed in the said county of McLennan, State of Texas, at a fictitious value, greatly in excess of the true market value; and the said John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbald, Benjamin Brewster, Henry H. Rogers, Wesley H. Tilford, Henry Clay Pierce, Arthur M. Finlay, C. M. Adams, J. P. Gruet, E. Wells, William Grice, E. T. Hathaway, F. A. Austin, and William E. Hawkins did then and there unlawfully make and enter into a trust, combination, conspiracy, contract, agreement, and obligation, and did unlawfully agree, combine, conspire, confederate, and engage with each other and among themselves that they would not manufacture, produce, sell, trade, and ship petroleum, petroleum oils, all their products, refined oils, illuminating oils, and lubricating oils below a certain price, which price was and is far above the true market value of said products and commercial commodities, and that they would (and did fix) fix and keep
15 the price of said oils in said county and in said State at a certain price and graduated figure, and that for the purposes

of establishing the prices of said oils and to preclude and destroy free and unrestricted competition in the manufacture, production, sale, trade, and shipment of petroleum, its products, refined oils, illuminating oils, and lubricating oils, the said above-named persons agreed to pool, combine, and unite their interests in the manufacture, production, sale, trade, and shipment of said products and oils so that the price thereof would affect and fix at a certain figure, and the prices of said oils were affected and fixed at a certain figure, and free and unrestricted competition in said products and articles of trade was destroyed and prevented.

That the prices of said oils were fixed and established, and free and unrestricted competition in the manufacture, production, sale, trade, and shipment of said oil was prevented and destroyed in the following manner: All of said above-named persons, in connection with divers other persons to the grand jurors unknown, would bring their oils into the various towns of Texas and in McLennan county, and where they found competition in the sale of their oils would immediately cut prices far below a profitable selling price and, by reason of their immense power, wealth, fortunes, trusts, mutual combination, and monopoly, keep said prices at said unprofitable figures until all competition had fled the town and had been wiped out and destroyed, when they would raise the prices of their oils far above the true market price and exact an exorbitant figure from the actual consumers of their oils and there keep fixed and established said unjust prices, against the peace and dignity of the State.

Third Count.

And the said grand jurors aforesaid upon their oaths in said court do further present that John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbald, Benjamin Brewster, Henry H. Rogers, Wesley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruet, E. Wells, E. T. Hathaway, F. A. Austin, and William E. Hawkins did unlawfully agree, combine, conspire, and confederate with each other and divers other persons in McLennan county, State of Texas, on or about October first, 1894,
16 in a conspiracy against trade, then and there creating a trust by a combination of their capital, skill, and acts with each other, for the purpose, design, and effect to create and carry out restrictions in trade, to wit, in the sale of petroleum, its products, coal oil and lubricating oil, the same being articles of trade and commercial commodities, by increasing the price to actual consumers thereof in McLennan county by agreeing among themselves that where they found competition in the sale of their oils that they would bring their said oils into the various towns in McLennan county, State of Texas, and reduce the prices of their commercial commodities far below a profitable selling price, and by reason of their immense power, wealth, fortunes, trusts, mutual combinations, and monopoly keep said prices at said unprofitable figure until all competition was crushed and destroyed and their weak competitors had fled the market, when the said persons above named would

raise the prices of their said oils far above the true and honest market price and exact an exorbitant and unreasonable figure from the actual consumers of their said oils, and there keep fixed and established said unjust and unreasonable prices, and that by said means said persons did so increase the prices of petroleum, its products, coal oil and lubricating oil, against the peace and dignity of the State.

Fourth Count.

And the said grand jurors aforesaid upon their oaths in said court do further present that John D. Rockefeller, Henry M. Flagler, William Rockefeller, Benjamin Brewster, John D. Archbald, Henry H. Rogers, Wesley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C M. Adams, J. P. Gruet, E. Wells, William Grice, E. T. Hathaway, F. A. Austin, and William E Hawkins did unlawfully agree, combine, conspire, and confederate with each other and with other persons to the grand jurors unknown, on or about the 1st day of October, 1894, in McLennan county, State of Texas, in a conspiracy against trade, then and there creating a trust by a combination of their capital, skill, and acts with each other and for the purpose, design, and effect to create and carry out restrictions in trade, to wit, in the manufacture, production, and sale of petroleum, its products, coal oil and lubricating oils, the same being articles
17 of trade and commercial commodities, by preventing competition in the manufacture, production, sale, and transportation of petroleum, its products, refined oils, illuminating oils, and lubricating oils, by agreeing among themselves that where they found competition in the sale of their oils that they would bring their said oils into the various towns in McLennan county, State of Texas, and reduce the prices of their various commodities far below a profitable selling price, and by reason of their immense powers, wealth, fortunes, trusts, mutual combinations, and monopoly keep said prices at said unprofitable figures until all competition was crushed and destroyed and their weak competitors had fled the market, when the said persons above named would raise the market prices of their said oils far above the true and honest market price and exact an exorbitant and unreasonable figure from the actual consumers of their said oils, and there keep fixed and established said unjust and unreasonable prices, and that by said means said persons did so crush competition in the manufacture, production, sale, and transportation of petroleum, its products, refined oil, illuminating oil, and lubricating oil, against the peace and dignity of the State.

Fifth Count.

And the grand jurors aforesaid upon their oaths do further present that in said county of McLennan, State of Texas, on or about the 1st day of October, 1894, John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbald, Benjamin Brewster, Henry H. Rogers, Wesley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruet, E. Wells, William Grice,

E. T. Hathaway, F. A. Austin, and William E. Hawkins did unlawfully agree, combine, conspire, and confederate with each other and with divers other persons to the grand jurors unknown in a conspiracy against trade, then and there creating a trust by a combination of their capital, skill, and acts with each other, for the purpose, design, and effect to carry out restrictions in trade, to wit, in fixing and establishing at a certain standard and figure the price of petroleum, its products, refined oil, illuminating oils, lubricating oils, whereby the prices to the public were controlled and established, the same being articles of trade and commercial commodities, by agreeing among themselves that where they found com-
18 petition in the sale of their oils they would bring their said oils in the various towns of the county of McLennan, State of Texas, and reduce the prices of their commodities far below a profitible selling price, and by reason of their immense power, wealth, fortunes, trusts, mutual combinations, and monopolies keep said prices at said unprofitable figures until all competition was crushed and destroyed and their weak competitors had fled the market, when the said persons above named would raise the prices of their said oils far above the true and honest market price and exact an unreasonable and exorbitant figure from the actual consumers of their said oils, and there keep fixed and established said unreasonable and exorbitant prices, and by said means said persons did keep fixed at a certain standard the prices of petroleum, its products, refined oils, kerosene, and lubricating oils, in such a manner that the prices to the public were controlled and established, and that said oils are commercial commodities and of prime necessity for use and consumption by the public in this State, against the peace and dignity of the State.

Sixth Count.

And the grand jurors aforesaid upon their oaths in said court do further present that on or about the 2nd day of January, A. D. 1882, a great many corporations, partnerships, firms, and individuals controlling, owning, and operating 95 per cent. of the capital invested in petroleum, its products, refined oils, illuminating oils, and lubricating oils, and in the manufacture, sale, and transportation thereof, met at some place in the United States to the grand jurors unknown and organized themselves into a trust, combination, conspiracy, and confederation with each other and among themselves to organize a monopoly to control the oil trade in the United States; that there were about thirty-nine corporations, partnerships, firms, and individuals who entered into and bound themselves by said trust, conspiracy, combination, and agreement, and that they were scattered over many States of the United States, and owned, controlled, and operated almost the entire petroleum-
19 oil industry of the United States, and that the purposes of said trust, conspiracy, combination, and agreement were to organize said corporations, partnerships, firms, and individuals into an agreement, combination, and trust to be known as

the "Standard Oil trust," for the purposes of mining, manufacturing, refining, and dealing in petroleum and all its products and all the material used in such business, and transact other business collateral thereto, and for such other purposes and powers as should be embraced in the several charters, such as should seem expedient to the parties thereto procuring charters; that, aside from the ostensible purposes already mentioned, the agreement, conspiracy, and trust were created and organized for the purpose of absorbing and controlling and monolopizing the petroleum-oil industry of the United States, and that said thirty-nine corporations, partnerships, firms, and individuals also entered into and organized said agreement, conspiracy, trust, confederation, and combination known as the "Standard Oil trust," for the purposes of, first, creating and carrying out restrictions in trade; second, of limiting the production and increasing the price of petroleum and its products, the same being a commercial commodity; third, of preventing competition in the making, manufacture, and transportation and sale of petroleum oil and its products; fourth, of fixing at a certain standard and figure the price of petroleum oil and its products, whereby their prices to the public would be controlled and established, and said products being of prime necessity to the people for use and consumption; fifth, for the purpose of binding themselves not to sell, dispose of, and transport petroleum oil and its products at a fixed and graduated figure, and to establish and settle the price of petroleum and its products at such figures so as to preclude a free and unrestricted competition in making, manufacturing, sale, and transportation of petroleum and its products, and for the purpose of pooling and combining their interests in the making, manufacture, sale, and transportation of petroleum and its products in such a manner that the price thereof would be affected, the said petroleum oil and its products being an article of trade and commercial commodity; that each of said corporations, partnerships, firms, and individuals agreed among themselves and with said trust to form in the States where they were respectively domiciled a corporation known as the "Standard Oil Company" of the State where formed, and to become a part of the trust known as the "Standard Oil trust," and that many such corporations, in pursuance of such agreement and trust, became a member and part of said "Standard Oil trust." The corporations, partnerships, firms, individuals, and corporations formed in pursuance of the agreement mentioned agreed to transfer and assign, and did transfer and assign, all their stock to nine trustees of the "Standard Oil trust," to be held by said trustees indefinitely; that the said corporations, partnerships, firms, and individuals agreed that nine trustees should be appointed to take charge of, control, and operate the affairs of the "Standard Oil trust," and that a certain number of trustees should be elected annually, after the election of the original trustees; that said trustees were required, empowered, and authorized to issue trust certificates to said corporations, partnerships, firms, and individuals in consideration for their said stock delivered and transferred to said trustees; that the value of said trust certificates so

issued amounted to many millions of dollars; that the general office of said "Standard Oil trust" should be in New York city; that the meetings should be there held and the trustees should be elected in New York city, and that the headquarters and general offices of the said nine trustees should be and remain in New York city; that the said corporations, partnerships, firms, and individuals then and there, on the 2nd day of January, 1882, agreed and contracted that the "Standard Oil trust" should be perpetual, and that it has existed since said agreement and trust, and that its general offices and headquarters and the general offices and headquarters of the said trustees are now situated and located in New York city, State of New York, pursuing and carrying out the purposes of said trust, conspiracy, combination, contract, and confederation, as hereinbefore detailed and stated; that said trustees are now engaged in carrying out, enforcing, and executing the terms and provisions of said trust, combination, conspiracy, and contract between said corporations, partnerships, firms, and individuals, and said "Standard Oil trust" is now in full force and effect and have been since the 2nd day of January, 1882, controlling, managing, and directing ninety-five per cent. of the capital invested in the petroleum industry, and that the value of said trust certificates now in
21 existence is about $200,000,000; that the trustees of the "Standard Oil trust" now in office are composed of the following-named persons, to wit, John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbald, Benjamin Brewster, Henry H. Rogers, and Wesley H. Tilford, and that said trustees are now carrying out, enforcing, and executing the trust agreement and conspiracy hereinabove set out; that said trustees have divided the market for petroleum oil and its products into various subdivisions between the members of the "Standard Oil trust," allotting to each corporation, firm, member, or individual of said trust a certain State or States in which to have the exclusive right to sell petroleum oil and its products; that the Waters-Pierce Oil Company, a corporation domiciled in the State of Missouri, has been allotted the market and territory lying in the States of Missouri, Arkansas, Louisiana, and Texas, and had the exclusive right to sell petroleum oil and its products in said States, and that the other members of said "Standard Oil trust" are bound by said trust not to invade said territory and sell therein; that the Waters-Pierce Oil Company has the exclusive right under said trust to sell petroleum oil and its products in Texas and in McLennan county, Texas; that the officers of said Waters-Pierce Oil Company are as follows: Henry Clay Pierce, president; Arthur M. Finley, vice-president; C. M. Adams, treasurer; J. P. Gruet, secretary, and E. Wells, auditor, and that Arthur M. Finley, vice-president, lives in Galveston, State of Texas; that said trustees of the said "Standard Oil trust" and said officers of the Waters Pierce Oil Company, in pursuance of the trust, agreement, and conspiracy hereinbefore set out, have subdivided Texas into four grand divisions in which to sell the oils of the Waters-Pierce Oil Company, and have appointed an agent for each grand division and many local agents for the various towns and

counties of Texas, and in McLennan county, State of Texas, to sell their said oils; that various local agents are acting under the supervision, direction, and orders of said trustees and said officers of the said Waters-Pierce Oil Company and send daily reports of their said sales of oil to said trustees and officers; that William E. Hawkins, among many others, is the representative and local agent in McLennan county, State of Texas, and by agreement is acting with, conspiring,
and confederating with said trustees of the "Standard Oil
22 trust" and the said officers and agents of the Waters-Pierce Oil Company, and is carrying out, enforcing, and executing in McLennan county, State of Texas, all the provisions, terms, and stipulations of said trust, conspiracy, contract, combination, and confederation, and was so doing on the first day of October, 1894; that on or about October 1, 1894, in McLennan county, State of Texas, in strict pursuance of and in accordance with said designs, agreements, trusts, combinations, conspiracy, contract, and confederation and to carry out and execute said purposes, as hereinbefore detailed and set out, John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbald, Benjamin Brewster, Henry H. Rogers, Wesley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruet, E. Wells, William Grice, E. T. Hathaway, F. A. Austin, and William E. Hawkins did unlawfully agree, combine, conspire, and confederate with each other and among themselves and with divers other persons in McLennan county, to the grand jurors unknown, in a conspiracy against trade, then and there creating a trust, by a combination of their capital, skill, and acts with each other for the purpose, design, and effect to create and carry out restrictions in trade, to wit, in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils, the same being articles of trade and commercial commodities, by keeping the price of said oils at a certain price per gallon or at a certain price as otherwise sold, which price was far above the true market price of said oils, and for the purpose and effect to prevent competition in the manufacture, production, sale, and shipment of petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils, and to limit and reduce the production of said products, and to raise the price thereof above the true market value, and to cause the same to be purchased by the actual consumers at a great price above the true market value, and to prevent competition in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all their products, refined oils, illuminating oils, and lubricating oils, the same being commercial commodities and products of prime necessity to the people, and for the purpose and effect to fix at a certain standard and figure the price of petroleum, petroleum
oils, their products, refined oils, illuminating oils, and lubricat-
23 ing oils, whereby the prices thereof were and are established and fixed in the said county of McLennan, State of Texas, at a fictitious value greatly in excess of the true market value, and did then and there unlawfully make and enter into a trust, com-

bination, contract, agreement, obligation, and conspiracy and did unlawfully agree, combine, conspire, confederate, and engage with each other that they would not manufacture, produce, sell, trade, and ship petroleum, petroleum oils, their products, refined oils, illuminating oils, and lubricating oils, below a certain price in McLennan county, State of Texas, which price was and is far above the true market value of said products, and that would fix (and did fix) and keep the price of said oils in said county and in said State at a certain price and graduated figure, and that for the purposes of establishing the prices of said oils and to preclude and destroy free and unrestricted competition in the manufacture, production, sale, trade, and shipment of petroleum, its products, refined oils, illuminating oils, and lubricating oils, all the above-named persons agreed to pool, combine, and unite their interests in the manufacture, production, sale, trade, and shipment of said products and oils, so that the price thereof would be affected and fixed at a certain figure, and the prices of said oils were affected and fixed at a certain figure, and free and unrestricted competition in said oils, products, and articles of trade was prevented and destroyed; that the prices of said oils were fixed and established and free and unrestricted competition prevented in the following manner, to wit: All of the above-named persons, in connection with divers other persons to the grand jurors unknown, would bring their oils into the various towns in Texas and into McLennan county, State of Texas, and where they found competition in the sale of their oils would immediately cut prices far below a profitable selling price and would not sell their oils to any dealer who would not agree not to purchase any competitive oils, and by reason of their immense power, wealth, fortunes, trusts, mutual combinations, and monopolies keep said prices at said unprofitable figures until all competition had been crushed and destroyed and all competitors had fled the market and towns of said State and McLennan county, when they would raise the prices of their oils far above the true and honest market prices and exact unreasonable and exorbitant prices from the actual consumers
24 and then and there keep fixed and established said prices; that in the manner, by the methods, and through the trusts hereinbefore described the said persons have carried restrictions in trade, increased the price of petroleum, its products and oils, and have destroyed competition in the manufacture, sale, and transportation of oils, and have fixed the prices of oils as a standard figure so as to control the price thereof to the public, and have pooled, combined, and united their interests in the manufacture, sale, and transportation of oils in such a manner as to affect the price thereof, and have greatly increased the prices of oils to the people in McLennan county, State of Texas; that the Waters-Pierce Oil Company, acting with said trusts, controls and manages 99 per cent. of the oil business of Texas, and that said business amounts to half a million barrels annually, against the peace and dignity of the State.

GEORGE T. KEEBLE,
Foreman of the Grand Jury, McLennan County, Texas.

3—758

THE STATE OF TEXAS, }
County of McLennan. }

I, B. E. Sparks, clerk of the district court within and for said county and State, do hereby certify that the above and foregoing is a true and correct copy of the original indictment now on file in this court.

Witness my hand officially and the seal of said court, hereto affixed, at office, in the city of Waco, this the 20th day of April, 1895.

[L. S.]

B. E. SPARKS,
Clerk District Court, McLennan County, Texas,
By R. W. SANFORD, *Deputy.*

25 *Judgment in Case No.* 871—*The State of Texas vs. Jno. D. Rockefeller et al.*

THE STATE OF TEXAS
vs.
JNO. D. ROCK-FELLER *et al.* } No. 871. November Term.

DEC. 2ND, 1895.

This day this cause was called for trial, and the State appeared by her county attorney, and the defendant E. T. Hathaway appeared in person and by counsel, and the State and defendant announced ready for trial, after having severed from his codefendants and after all defendants agreed that he might be placed upon trial first, and the defendant E. T. Hathaway in open court pleaded not guilty to the charge contained in the indictment herein.

Thereupon a jury, to wit, B. H. Cherry and eleven others, was duly selected, empannelled, and sworn, who, having heard the indictment read and the defendant E. T. Hathaway's plea of not guilty thereto, and having heard the evidence submitted, and having been duly charged by the court, retired in charge of the proper officer to consider of their verdict, and afterwards, on the 12th day of December, 1895, were brought into open court by the proper officer, the defendant E. T. Hathaway being present, and in due form of law returned into open court the following verdict, to wit:

"We, the jury, find the defendant guilty as charged in the indictment, and assess his punishment at a fine of $50.00 (fifty dollars).

B. H. CHERRY, *Foreman.*"

Which verdict was received by the court.

It is therefore considered and adjudged by the court that the defendant E. T. Hathaway is guilty of the offense of conspiracy against trade as found by the jury, and that he be punished, as has been determined by the jury, by the payment of a fine of $50.00. It is therefore hereby ordered, adjudged, and decreed by the court that the State of Texas do have and recover of and from E. T. Hathaway, defendant, the sum of fifty ($50.00) dollars, together with all costs of this prosecution, for which let execution issue, and that

said defendant, E. T. Hathaway, be remanded to the custody of the sheriff of McLennan county until he shall have paid said fine; and further ordered that should said defendant, E. T. Hathaway,
26 escape from said custody before he shall have paid said fine, *capias profine* issue for his arrest.

THE STATE OF TEXAS, }
County of McLennan. }

I, Jno. H. Sears, clerk of the district court within and for said county and State, do hereby certify that the above and foregoing is a true and correct copy of the original judgment in cause No. 871, The State of Texas *vs.* Jno. D. Rockefeller *et al.*, as same appears in vol. 1, page 164, of the Criminal Minutes of the 54th Judicial District Court of McLennan County, Texas.

Witness my hand officially and the seal of said court hereto affixed, at office, in the city of Waco, this the 1st day of March, 1897.

JNO. H. SEARS,
Clerk District Court, McLennan County, Texas,
[SEAL.] By W. M. McCLAIN, *Deputy.*

27 *Sentence of E. T. Hathaway in Cause* # 871, *in 54th Judicial District Court, McLennan Co.*

THE STATE OF TEXAS }
vs. } # 871. November Term, 1895.
JNO. D. ROCKEFELLER *et al.* }

DECEMBER 16TH, 1895.

This day this cause was again called, and the State appeared, by her county attorney, and the defendant E. T. Hathaway was brought into open court in person, in charge of the sheriff, for the purpose of having the sentence of the law pronounced in accordance with the verdict and judgment herein rendered and entered against him on a former day of this term, and thereupon said defendant, E. T. Hathaway, was asked by the court whether he had anything to say why said sentence should not be pronounced against him, and he answered nothing in bar thereof, except that he had given notice of appeal in accordance with the law; whereupon the court proceeded in the presence of said defendant, E. T. Hathaway, to pronounce sentence against him as follows:

It is the order of the court that the defendant E. T. Hathaway, who has been adjudged to be guilty *guilty* of conspiracy against trade, and whose punishment has been assessed by the verdict of the jury at the payment of a fine of $50.00, be committed to the custody of the sheriff of McLennan county, Texas, immediately, and by said sheriff confined in the county jail of McLennan county, Texas, until the, the said defendant, shall have fully paid the fine.

STATE OF TEXAS, }
County of McLennan. }

I, Jno. H. Sears, clerk of the district court of McLennan county, do hereby certify that the above and foregoing is a true and correct copy of the sentence in cause No. 871, The State of Texas *vs.* Jno. D. Rockefeller *et al.*, as recorded in Criminal Minute Book 1, page 378, of the 54th judicial district court of McLennan county, Texas.

In witness whereof I set my hand and seal of office, at office,
28 in the city of Waco, on this the 1st day of March, 1897.

JNO. H. SEARS,
Clerk D. C., McL. Co., Texas,
[SEAL.] By R. V. McCLAIN, *Deputy.*

29 *Brief of Appellant in Hathaway vs. State of Texas.*

In the Court of Criminal Appeals, at Dallas, January Term, 1896.

E. T. HATHAWAY, Appellant, }
vs. } No. —.
STATE OF TEXAS, Appellee. }

Appeal from the district court of the 54th judicial district for McLennan county.

Brief of appellant.

This is an appeal from a conviction for the offense of a "conspiracy against trade" under an act of the legislature of the State of Texas entitled "An act to define trusts, and to provide for penalties and punishment of corporations, persons, firms, and associations of persons connected with them, and to promote free competition in the State of Texas," approved March 30, 1889.

The indictment in this case was presented in the district court of the fifty-fourth judicial district for McLennan county on the 21st day of November, 1894, and the cause was docketed as number 871, The State of Texas *vs.* John D. Rockefeller *et al.* This indictment charged that John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbold, Benjamin Brewster, Henry H. Rogers, Westley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Grewett, E. Wells, William Grice, E. T. Hathaway, and F. A. Austin did unlawfully agree, combine, conspire, confederate, and engage with William E. Hawkins and divers other persons to the grand jurors unknown, in McLennan county, in a conspiracy against trade, then and there with the said William E. Hawkins and said other persons creating a trust by a combination of their capital, skill, and acts with the said William E. Hawkins and other persons, for the purpose, design, and effect to create and carry out restrictions in trade. (R., pp. 1, 2.)

The indictment contains six counts and covers every phase and

feature of said act, the title to which is above recited. This
30 indictment may be found in the Record, pages 1 to 15, and a certified copy thereof is herewith printed as appendix "A" to this brief for the convenience of the court.

The first count of said indictment charges all the parties named with combining with William E. Hawkins, in McLennan county, with the design to create and carry out restrictions in trade in the manufacture, production, sale, trade, and shipment of petroleum oils., etc., by keeping the price of said oils far above the true market price and for the purpose of preventing competition in such manufacture, production, sale, etc., of petroleum oils, and to limit and reduce the production of such oils, and to raise the price thereof above the true market value, and to cause the same to be purchased by consumers at a great price above the true market value, and to prevent competition in its manufacture, production, sale, etc., and to fix at a certain standard and figure the price of such oils in McLennan county, Texas, at a fictitious value greatly in excess of the true market value, and for this purpose the said parties did make and enter into a trust, contract with the said Hawkins and other persons in McLennan county, and did agree to pool their interest in the manufacture, production, sale, etc., of oils, so that the price thereof would be fixed at a certain figure. (R., 1–3.)

The second count in the indictment charges that John D. Rockefeller and others above named, including William E. Hawkins, did combine and conspire with each other in McLennan county, about the first day of October, 1894, in a conspiracy against trade, and then and there creating a combination of their capital, skill, and acts for the purpose, design, and effect to create and carry out restrictions in trade in the manufacture, production, sale, etc., of petroleum oils by keeping the price of said oils at a certain price per gallon, which price was far above the true market value, and for the purpose and effect to prevent competition in such manufacture, production, sale, etc., of petroleum, and to limit and reduce the production of said products, and to raise the price thereof above the true market value, to the detriment of consumers, and to prevent competition in the manufacture, production, sale, etc., of such oils,
and for the purpose of fixing at a certain standard figure
31 the price of such oils, whereby the prices were established and fixed in the county of McLennan at a fictitious value greatly in excess of the true market value, and that said parties named did engage and agree with each other that they would not manufacture, produce, sell, trade, and ship petroleum oils below a certain price, which price was far above the true market value, and that they would and did fix and keep the price of such oils in said county at a certain price and graduated figure, and for the purpose of precluding and destroying free and unrestricted competition such persons agreed to pool their interest in such manufacture, production, sale, etc., of oils, so that the price would be fixed at a certain figure, and the prices were fixed at a certain figure and free and unrestricted competition was destroyed in the manner following, to wit: That all of the defendants, in connection with divers

others persons unknown, would bring their oils into Texas towns and in McLennan county, and wherever they found competition would immediately cut prices far below a profitable selling price, and by reason of their power and wealth would keep prices at such unprofitable figure until all competition had fled and been destroyed, when they would raise prices far above the true market price, etc. (R., pp. 3–5.)

The third count of the indictment charges the parties named, including Hawkins, with the combination and conspiracy against trade and carrying out a trust in McLennan county, Texas, on or about October 1st, 1894, by a combination of capital, skill, and acts to carry out restrictions in trade, to wit, in the sale of petroleum by increasing the price thereof to consumers in McLennan county; by agreeing among themselves that where they found competition they would bring their oils in and reduce the prices far below a profitable selling price, and by reason of their immense power, wealth, etc., to keep said prices at an unprofitable figure until competition was crushed and destroyed, after which they would raise the price far above true and honest market prices and exact an exorbitant, unreasonable figure from consumers and keep such prices fixed and established, and by said means they did so increase the price of petroleum oil. (R., pp. 5–6.)

The fourth count charges said parties, including Hawkins, with an unlawful combination and conspiracy on or about the
32 first day of October, 1894, in McLennan county, in then and there creating a trust by a combination of capital, etc., for the purpose and design to create and carry out restrictions in trade, to wit, in the manufacture, production, and sale of petroleum oil by preventing competition in the manufacture, production, and sale, etc., by agreeing that where they would find competition they would bring their oils into the various towns in McLennan county and reduce prices far below a profitable selling price, and by reason of their immense power, wealth, etc., keep said prices at such an unprofitable figure until competition was crushed and their weak competitors had fled the market, when they would raise the price far above the true and honest market price and exact exorbitant and unreasonable figures from consumers, and keep such prices fixed and established, and by means thereof did crush all competition. (R., pp. 6–7.)

The fifth count charged that the parties named, on or about the first day of October, 1894, did conspire and confederate and did create a trust by a combination of capital, etc., with the design and effect to create and carry out restrictions in trade, in fixing and establishing at a certain standard figure the price of petroleum oils, whereby such prices were controlled to the public, and by agreeing among themselves that where they found competition they would bring their oils into the various towns in McLennan county and reduce prices far below a profitable selling price, and by reason of their immense wealth, etc., keep said prices at such unprofitable figures until all competition was crushed and competitors fled the market, when they would raise the prices of their oils far above the

true and honest market price and exact an unreasonable figure from consumers for their oils, and keep such prices fixed and established, by means whereof such persons did keep fixed at a certain standard the prices of petroleum oils, etc. (R., pp. 7-8.)

The sixth count of said indictment charged the organization of the Standard Oil trust in New York on the 2nd day of January, 1892, between a great many corporations, partnerships, firms, and individuals who controlled and operated 95 per cent. of all the capital invested in petroleum oils and its products, in which Standard Oil agreement they bound themselves to organize a monopoly to control the oil trade in the United States; that the purpose of said trust, conspiracy, and combination *were* to organize
33 the Standard Oil trust for the purpose of manufacture, dealing, etc., in petroleum and its products, and for such other purposes as should be embraced in the several charters of the component companies and should seem expedient; that aside from the ostensible purposes such agreement was for the purposes of absorbing and monopolizing the petroleum-oil industry of the United States, and such combination was also for the purpose, first, for creating and carrying out restrictions in trade; second, of limiting production and increasing prices; third, for preventing competition and fixing at a certain standard figure the price of petroleum oil and its products; fourth, for the purpose of combining themselves with the object not to sell, dispose of, or transport petroleum oils below a certain standard figure; to keep the price of said products at a fixed and graduated figure, and to establish the price of petroleum and its products at such figures as to preclude the free and unrestricted competition, and for the purpose of combining their interests in the business. It was further alleged that each of the corporations, partnerships, firms, and individuals agreed to form Standard Oil Companies in certain of the States, which corporations were formed in pursuance of such agreement; that they further agreed to transfer and assign to the Standard Oil Company all the stock held by the participants in the individual companies, the trustees of the trust being authorized to issue trust certificates in exchange for such stock, such certificates amounting to many millions of dollars; that such agreement should be perpetual and it has existed ever since said date, and that the trustees of said oil trust are now engaged in carrying out the terms of the agreement, and have been since January 2, 1892, controlling and managing 95 per cent. of the capital invested in the petroleum industry in the United States; that the value of the certificates now in existence is about $200,000,000; that the trustees have divided the market for petroleum oils into subdivisions, allotting to each corporation, etc., a certain State or States in which to op-rate. This count further charges that the Waters-Pierce Oil Company, a corporation domiciled in the State of Missouri, has been allotted the market lying in the States of Missouri, Arkansas, Louisiana, and Texas, with the exclusive privilege of selling petroleum oil, etc., in said States, and that the other members of the Standard Oil trust

are bound by said agreement not to invade said territory
34 and sell therein; that the trustees of the Standard Oil trust and the officers of the Waters-Pierce Oil Company, in pursuance of the trust agreement and conspiracy, have subdivided Texas into four grand subdivisions in which to sell oil, and the Waters-Pierce Oil Company have an agent for every grand division and a local agent for the various towns and counties of Texas and in McLennan county, and these agents are acting under the control and management and direction of the trustees of the Standard Oil trust and the officers of the Waters-Pierce Oil Company and send daily reports of their sales of oil to said trustees and officers; that William E. Hawkins is the local agent of said trust in McLennan county, and, by agreement, is conspiring and confederating with the said trustees and officers and agents of the Waters-Pierce Oil Company in carrying out said conspiracy; that on or about October 1, 1894, in McLennan county, in pursuance of said designs and trust agreement and conspiracy, all the defendants, including John D. Rockefeller and others, did unlawfully agree, combine, etc., with themselves and with divers other persons in McLennan county, Texas, unknown in a conspiracy against trade, then and there creating a trust, by the combination of capital, skill, etc., with the design and purpose of carrying out restrictions in trade, to wit, in the manufacture, production, sale, etc., of oils, by keeping the price of oils at a certain rate per gallon, or at a certain price as otherwise sold, which price was far above the true market price, and with a view to preventing competition, reduce production, raise the price above the market value and cause the same to be purchased by actual consumers at a great price above the true market value, preventing competition, and fixing a certain standard figure in the price of petroleum oils, whereby such prices were raised and established and fixed in McLennan county at a fictitious value greatly in excess of the true market value; that the parties defendant did then and there unlawfully enter into a trust, combination, and conspiracy, and did conspire and confederate with each other, that they would not manufacture, produce, sell, etc., petroleum oils below a certain price in McLennan county, which price was above the true market value of said products, and did fix and keep the price in said county
at a certain figure, and, for the purpose of establishing the
35 price and to preclude and destroy free and unrestricted competition, the defendants agreed to pool their interests, so that the price of oil would be effected and fixed at a certain figure, and such prices were effected and fixed at a certain figure; free competition was destroyed in the following manner, to wit: All the defendants, in connection with divers other persons to the grand jurors unknown, would bring their oils into McLennan county, and when they found competition would immediately cut prices far below a profitable selling price and would not sell their oils to any dealer who did not agree not to purchase any competition oils, and, by reason of their immense power, wealth, etc., kept the price of oils at such unprofitable figures until all competition had been crushed and the competitors driven out of the market in McLennan county,

when they would raise the price of their oils far above the true and honest market price and exact unreasonable and exorbitant prices. (R., 8–14.)

The case was called for trial December 2, 1895, and the defendants who were arrested, to wit, Arthur M. Finley, William Grice, E. T. Hathaway, F. A. Austin, and W. E. Hawkins, severed, the other defendants not having been arrested, and E. T. Hathaway, the appellant, was placed on trial and announced ready, as did the State. (R., p. 19.)

After the announcement of ready for trial the defendant E. T. Hathaway filed and presented exceptions to the indictment, in substance, to wit:

1. Because it did not appear from the indictment that any offense against the law had been committed.

2. Because the indictment showed upon its face that the district court of the fifty-fourth judicial district had no jurisdiction.

3. Because the act of 1889, hereinbefore recited and upon which the prosecution was founded, was violative of both the Constitution of the United States and of the State of Texas, for the reason that said statute discriminated between different classes of persons and citizens of the State of Texas and of the United States, and denied certain persons and citizens the equal protection of the law, and proposed to deprive certain citizens of liberty, property, privileges, and immunities in a way other than by due course of the law of the land.

4. Because said act of March 30, 1889, was inoperative and void as to persons resident beyond the territorial limit of Texas.

36 5. Because said act did not prohibit a trust or declare it illegal, nor did it declare it an offense or propose to punish it, but merely defined a trust, without denouncing it, and was therefore not a penal law of the State of Texas and no prosecution could be maintained under it.

6. Because the indictment showed upon its face that the parties present were engaged in interstate commerce within the meaning of the Constitution and laws of the United States, and the district court of the fifty-fourth judicial district had no jurisdiction. (R., pp. 15–17.)

The court overruled these exceptions; to which the defendant excepted. (R., pp. 18.)

Thereafter the trial proceeded and continued until the 12th day of December, 1895, and the jury brought in their verdict, finding the defendant E. T. Hathaway guilty as charged in the indictment and assessing his punishment at a fine of fifty dollars, which verdict was received by the court and judgment duly entered thereon. (R., p. 19.)

On December 14, 1895, the defendant E. T. Hathaway filed his motion for a new trial, setting up fifty-four distinct grounds therefor (R., pp. 360–385). This motion was overruled by the court on December 16th, 1895, to which the defendant E. T. Hathaway excepted and gave notice of appeal. (R., p. 386.)

On December 14, 1895, the defendant also filed his motion in

arrest of judgment upon substantially the same grounds set up by his exceptions to the sufficiency of the indictment filed antecedent to the trial, with this additional ground, however, in substance, to wit, because the indictment was substantially defective in that it charged the defendant Hathaway with having violated the law of conspiracy against trade in carrying out, as principal, director, agent, or employé, the stipulations of the Standard Oil Trust agreement, but failed to charge that the defendant knowingly did this, when by the terms of the law no violation can be committed except the same be done knowingly, and that before defendant could be convicted it should have been alleged in the indictment that he acted knowingly; that the court in his charge submitted
37 such issue of knowledge to the jury, and that there was no allegation authorizing it, nor was there any proof thereof, and for this failure to charge in the terms of the statute the indictment was fatally defective. (R., pp. 386–389.)

The court overruled defendant's motion in arrest of judgment on December 16, 1895, to which the defendant in open court excepted. (R., p. 389.)

On December 16 the defendant was duly sentenced in accordance with the verdict and judgment, and was committed to the custody of the sheriff for confinement in the county jail (R., p. 391). The defendant having been granted ten days after adjournment of court in which to file statement of facts (R., p. 390), and having filed said statement within the time limited (R., pp. 20–222), prosecuted this appeal on fifty-three assignments of error, duly filed and incorporated in the record (R., pp. 392–416). These will be discussed in their order, grouping such assignments of error as may be germane to the particular assignments.

I.

Appellant's first and second assignments of error are as follows:

1. The court erred in overruling the exceptions of the defendant in the indictment in this cause.

2. The court erred in overruling defendant's motion in arrest of judgment for the reasons therein set out. (R., p. 392.)

As the grounds of exceptions filed and overruled by the court are similar to those presented in appellant's motion in arrest of judgment, the two will be treated together, in so far as this identity extends. The defendant E. T. Hathaway excepted to the sufficiency of the indictment upon the following grounds:

1. Because it does not appear upon the face of the indictment that an offense against the law was committed by this defendant.

2. Because said indictment shows upon its face that the district court of the fifty-fourth judicial district of the State of Texas has no jurisdiction thereof.

3. Because the act of the legislature of the State of Texas
38 entitled "An act to define trusts, and to provide for penalties and punishment of corporations, persons, firms, and associations of persons connected with them, and to promote free competition in the State of Texas," approved March 30, 1889, and published

in the General Laws of the State of Texas for the year 1889 as chapter 117, and which statute is the basis of the prosecution against this defendant in these cases, is violative of both the Constitution of the United States and the State of Texas, in this, to wit:

That said statute discriminates between different classes of persons and citizens of the State of Texas and of the United States, and denies to certain persons and citizens the equal protection of the law, for that said statute authorizes the punishment of certain citizens and classes for acts and omissions, while it expressly authorizes many other classes and citizens to do and perform said acts made penal as aforesaid. Said act is void because in conflict with the constitution of the State of Texas and the bill of rights therein, which declares "All men shall have equal rights, and that no man or set of men is entitled to exclusive public emoluments of privileges but in consideration of public services," and that "No citizen shall be deprived of life, liberty, property privileges or immunities or in any manner disfranchise-, except by due course of the law of the land."

Said act is void because in conflict with the Constitution of the United States, which declares that "No State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law," because, while pretending to embrace within its purview all classes and conditions of men, in order to prevent combinations by which the costs of the necessaries and comforts of life to the people might be increased, it is, by the express exemption of producers and raisers of agricultural products and live stock contained in the 13th section thereof, limited in its application to a comparatively small portion of the people, who are thereby subjected to pains and penalties not inflicted upon the great majority of people under similar circumstances and conditions.

39 4. Because said act of March 30, 1889, is inoperative and void as to persons resident beyond the territorial limits of the State of Texas, and who have not and never have been personally present in the State of Texas nor done any act within the State of Texas which could subject them to the penalties prescribed.

Said act is void and of no effect in so far as it denounces the penalty against any person, firm, or corporation by reason of any acts or dealings of interstate commerce within the meaning of the law, the said State of Texas, in all of its departments, being wholly without jurisdiction in such cases.

5. Because said act of March 30, 1889, does not prohibit a trust or declare it illegal, neither does it declare it an offense or propose to punish it, but merely defines a trust without denouncing it, and is therefore not a law and never was a penal law in the State of Texas, and no suit or prosecution can be maintained under it.

6. Because said indictment shows upon its face that the parties charged therein have manufactured, shipped, and transported oil, if at all, from some other State into the State of Texas and there sold the same, and that such acts constitute interstate commerce

within the meaning and intention of the Constitution of the United States and the laws of Congress passed in pursuance thereof, and this court has no jurisdiction of any such acts by indictment or otherwise.

The court will perceive from a reading of these exceptions that there are three distinct grounds relied upon by the appellant for invoking the judgment of the court as to the nullity of the prosecution. These grounds may be grouped and stated together as follows:

1. The act of March 30, 1889, is repugnant both to the constitution of the State of Texas and the Constitution of the United States, for the reasons stated in said exceptions.

2. If said act of March 30, 1889, is not violative of the Constitution, State and Federal, it is invalid and inoperative as a penal enactment by reason of its failure to prohibit trusts or to declare them illegal, and because of the further failure of said acts to declare any offense or propose any punishment for it.

3. Said act is further inoperative and void as to persons resident beyond the territorial limits of the State of Texas, and especially as to those persons who are engaged in interstate commerce, and as to these classes of persons, the Congress of the United States having covered the field attempted by the act in question, locally, in the passage of the conspiracy act of 1890, the State is without jurisdiction, either executive, legislative, or judicial, to punish offenses coming within the denunciation of the act of Congress aforesaid.

And as a matter of constitutional construction it is indifferent whether Congress had passed any act or not, the jurisdiction vested by the Constitution of the United States in matters of interstate commerce being exclusive in the Federal Government.

The constitutionality of the act of March 30, 1889, it is insisted for appellant, is still an open question, especially in this court. We say this with perfect respect for the intimations contained in the opinion of the Supreme Court decided in the case of Anheuser Busch Company *vs.* Houck, 30 S. W. Rep., 869. We say "intimation," because the question of constitutionality of the act of March 30, 1889, was not raised in that case and was not before the court; neither was it raised in the case while pending on appeal in the court of civil appeals for the fourth supreme judicial district, and the opinion of the court of civil appeals for that district was equally gratuitous, as this court will find upon an inspection of that opinion. (See Anheuser Busch *v.* Houck, 27 S. W. Rep., 692.) We are also not unmindful of the learned discussion of the chief justice of the supreme court as delivered in the case of The Queen Insurance Company *vs.* The State, 86 Tex., 267–'8. In the Anheuser Busch case, *sup.*, the court of civil appeals in an opinion delivered by Chief Justice James used this language:

"The constitutionality of the act of 1889 is not raised in the brief and we perceive no objection to it in that respect. The question was raised in the case of Insurance Company *vs.* The State (Tex. Sup., 24 S. W. Rep., 397), but was found not necessary for its de-

cision. The objection there pointed out, which seems to be
41 the only one to suggest itself, is the clause exempting from its provisions all agricultural products and live stock while in the hands of the producer. This is said to make the act class legislation. It is apparent that all persons of every class upon whom the act professes to operate are treated without distinction. This feature of a general statute is held to be the test of whether it is or not obnoxious to that objection, and we believe the act to be valid. Railway Company *v.* Mackey, 127 U. S., 205, etc."

An examination of the authorities cited by the court of civil appeals, and especially the Mackey case, 127 U. S., 205, reveals the fact that such decision does not support the court in its opinion. That was a Kansas case, involving the validity of the fellow-servant act as applied to railroads, and the reasoning of the Supreme Court of the United States, as well as its decisions, cannot be perverted so as to afford a proper support to the text of the opinion of the court of civil appeals. The Supreme Court, in passing upon the same case on writ of error, used this language:

"For the reasons given by the court of civil appeals, we also agree with them in holding that the act is not in violation of the Constitution." (S. W. Rep., 870.)

So we repeat again that there is no authoritative decision in this State upon the question duly raised and presented, holding that the act of March 30, 1889, is constitutional; and while the intimations of the court of civil appeals for the fourt-supreme judicial district and of the Supreme Court are entitled to respect, yet they are clearly made without argument or consideration and in a case in which the question was not presented by counsel. We therefore submit with confidence this proposition:

The act of March 30, 1889, is violative of both the Constitution of the United States and the constitution of the State of Texas in that it is class legislation, discriminates against citizens, and denies to citizens the equeal protection of the laws.

The gist of the decision in Railway Company *vs.* Mackey,
42 127 U. S., 209, may be stated in the exact language of that court, as follows:

"When legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws if all persons brought under its influence are treated alike under the same conditions."

The legislation in question does not apply to particular bodies or associations. It does not impose upon them additional liabilities. Such legislation, we submit, will contravene the organic law relating to the equality of citizens, even had it exempted from its operation farmers and stock-raisers. But this is not the exemption prescribed. The law goes much further than this and exempts particular classes of farmers and particular classes of stock-raisers. Its language is, "The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser." (Sec. 13.) A reading of this section clearly manifests

that there may readily occur instances in which some farmers and some stock-raisers may become liable to the penalties prescribed, if, indeed, there are any penalties prescribed, in this act for conspiring and combining together to raise or lower prices, restrict trade, or monopolize the markets. Under a proper construction of this exemption it would seem that farmers and stock-raisers are not exempted from the denunciations of the statute, if it contains any denunciations, except as to the agricultural products and live stock in the hands of the original producer or raiser. A farmer may be prosecuted, if the law is valid, if he combines with his neighbors to raise, lower, or affect prices of wheat, corn, hay, oats, butter, chickens, eggs, or poultry which he may have procured by purchase or exchange from his neighbor farmer, while free to make these combinations with reference to such products as he may have raised himself. What better right does a farmer have over the products he raises than over those he may have purchased? His ownership and right of property is the same in both instances, and yet under this law he may combine and confederate to fix prices and
43 monopolize markets as to such products as he may have raised or produced, and yet become a felon under the law if he undertakes to do identically similar acts with reference to other agricultural products which he may have obtained by exchange with his neighbor.

And the inequality of the law becomes perfectly apparent when we consider that a farmer in possession of corn, wheat, and oats that he has raised can combine and fix prices as to such commodities and at the same time his neighbor, who may be the owner of similar commodities which he may have bought or traded for, is prohibited, under heavy penalties, from doing the same identical act, or, to carry the illustration further, the land-owner, who may be a farmer himself and yet cultivate his farm exclusively by tenants, who pay him rent, is not permitted to combine and fix prices and control, or attempt to control, markets as to the agricultural products he may have received for the rent of his farm, for in that event he would not be the original producer within the meaning of the law, and yet the tenants upon said farm, who are the original producers, may combine to any extent they deem proper for these identical purposes without fear of punishment.

Or, to state another illustration of the construction and effect of the act under discussion, the large farmer, who owns thousands of acres of land and yet cultivates the same by hired labor exclusively, is an original producer under the statute and can combine to any extent he pleases with any person, firm, or corporation he pleases for the purpose of fixing prices and monopolizing the market, and yet his humble neighbors, who may perhaps live on their farms and yet rent them out to tenants, is not permitted to make like combinations, because in this instance the tenants are the original producers and his ownership of the agricultural products is derived by collection of rent in kind.

The same confusion and contradiction occurs when we consider the effect of the statute in the matter of live stock in the hands of

the raiser. The owners of ranches comprising thousands of acres as well as thousands of head of cattle, horses, sheep, etc., are authorized and encouraged by the statute to make all sorts and
44 kinds of combinations, regardless of their effect upon the interest of the general public, and are, you might say, by the terms of the statute expressly authorized to combine to fix prices, to restrict trade in articles of prime necessity, and to monopolize the markets, but the dealer in live stock, the purchaser from these cattle kings, the men who furnish him a market for his products and who as a class are not possessed of any wealth usually, are denounced as felons if they in like manner, even for self-protection, combine with one of their fellows in attempting to fix prices or to protect themselves from the rapacity of original producers.

These illustrations demonstrate very clearly that the real reason alleged by the courts, and especially by the Supreme Court in the Mackey case, *sup.*, cannot apply to the act in question. As said before, this act does not apply to particular bodies or associations. It does not apply to any class as a class. Even the particular classes apparently embraced within the purview of the ststutory exemption are susceptible of division, and a portion of a class is entitled to claim immunity, while other portions of the same class, deriving their livelihood in the same manner and by the same methods, come within its denunciation. Some farmers are exempt as original producers, while other farmers are punished. Some stock-raisers are exempt from penalties, while other stock-raisers who have bought or traded for their cattle or taken cattle, horses, or other stock in payment for debt *or* not.

Carrying the line of argument further and leaving out of view altogether this discrimination between citizens of the same class, which discrimination the acts in question evidently embraces, and turning to the body of the people proposed to be affected by the act, we find, employing the language of the Supreme Court of the United States in the Mackey case, that additional liabilities are not applied to the particular bodies or associations, but that citizens who are subjected to penalties of the act comprise no particular class.

This is not a case where certain duties are devolved upon all railroads, as in that case, but here the legislature of Texas has
45 seen fit, in its wisdom (if the act is a penal enactment), to denounce a general penalty of felony, accompanied with imprisonment in the penitentiary and fine, as punishment against the whole body of the people for any violations of the terms of the act; but before concluding the enactment, which was evidently designed and intended to protect the people of Texas in their procurement of the necessaries of life, the same legislature, incited by some motive, which need not be discussed, has seen fit to exempt or attempt to exempt from the operations of the statute the principal ingredients which enter into the necessaries of life and to have the penalty for a violation of the law applicable to only a small part of the citizenship of the State.

Agricultural products in its proper and general sense includes

corn, wheat, and other grain upon which the people rely for bread. The term also includes the wool and cotton upon which the people must rely for their necessary clothing. The term live stock includes every species of animal subject to use as food by man. So in the matter of food and raiment the legislature has extended encouragement to monopoly in a bill having for its object the promotion of free competition in the State of Texas and the cheapening of the necessaries of life.

The exemption of these products in the hands of the original producer and raiser exempts, upon a rough estimate, four-fifths of the people of Texas from the operations of the act because four-fifths of the people of Texas are engaged in the business of producing and raising agricultural products and live stock.

The penalties are visited upon the remaining one-fifth of the people of Texas without regard to any particular class. This one-fifth comprises all classes and conditions not heretofore exempted, and this in the face of the constitutional guaranties, State and Federal, of perfect equality of the citizens before the law. Even in the matter of labor the iniquitous character of the enactment under discussion is apparent. This statute makes no exemption of labor or of the products of labor. Under its terms and provisions the laborer is subjected to punishment for doing the very act that the landowner or farmer is authorized to do. The original producer, if a farmer, has authority to combine to fix prices, restrict trade,
46 build up monopoly, while original producers in other lines of labor are denounced. The agricultural products of the farmer are the fruits of his labor, but no more so than the manufactured articles of the working man are the fruits of his labor. The blacksmith, the carpenter, and all other similar artisans purchase their raw material, and the manufactured product constitutes the fruits of his labor and upon which he must rely for the sustenance of himself and family, just as the agricultural products of the farmer constitute the fruits of his labor and upon which he relies for similar purposes; yet the statute prescribed total inequality between these classes and encourages the one to build up monopolies, while denouncing the others if they make any attempt in the same direction, or, to apply the provisions of the statute to the matter of live stock, from which application this inequality becomes still more apparent, the cattle king may raise his thousands of head of live stock each year, and so long as this stock remains in his hands he can combine not only with his neighbors, but with all other similar original producers throughout the State of Texas, or even throughout the United States, for the purpose of fixing prices and monopolizing markets. Not so, however, with the hands which he employs and which constitutes the ordinary labor of the ranch. The fruits of the labor of the latter class are his day's work. This may be paid him either in money, which he invests in stock, or it may be paid him in stock on shares or otherwise, and yet, not being the original producers, he is forbidden to make any combination of any character whereby the prices of the fruits of his labor can be promoted or regulated in any manner whatsoever. These common

laborers on the ranch can form no agreement among themselves whereby they can maintain the prices of their labor, and yet the ranch-owner can combine with other ranch-owners with reference to the prices of their products, which constitute the fruits of their labor. The demonstration can be carried to a further absurdity by simply calling attention to the fact that under the terms of the statute the farmer or stock-raiser may combine with any person, firm, or corporation whomsoever or any number of them in respect to agricultural products he has produced or the live stock he has raised without fear of punishment under the law, and yet the party or parties with whom he makes such combinations may be
47 held liable to all the penalties denounced against such combinations. Two citizens may combine, therefore, for the purpose of fixing prices, one by doing so committing a crime and the other by so doing performing a laudable act. If this is equality before the law within the meaning of the Constitution, we had better revise the Constitution.

The court will bear in mind that the body of the citizenship, upon whom the penalties of this statute fall, do not constitute a class whose business implies a trust or public duty. It extends to and affects matters of private business almost exclusively. The condition of the laws, including this enactment under discussion and the railroad commission act of 1891, demonstrate that in so far as railway corporations are concerned this act of 1889 is mere *brutem fulmen*. It is true this act of March 30, 1889, commonly known as the "anti-trust law," does prescribe that corporations shall not combine to raise prices for transportation, and the theory upon which it rests is that there shall be at all times free and active competition in the matter of transportation within the State of Texas. This theory, however, was overturned altogether by the passage of the railway commission act of 1891, which, in effect, forbids competition between railway lines; and the State, by the terms of the commission act and of the constitutional amendment authorizing its enactment, assumed the duty and is now exercising it of fixing rates for transportation of all commodities at a fixed and standard price, and denounces with very heavy penalties any railway company which may offer to compete in the matter of prices for transportation. If the anti-trust act of 1889, under discussion, applied only to those occupations where the business implies a trust or public duty, such as railways, telegraphs, telephones, etc., then the argument might be plausible that it was not class legislation. But such is not the case here at bar. The penalties are visited, not upon those exercising a trust or public duty, but upon the body of private citizenship, composed of artisans, mechanics, professional men, merchants, traders, and the like, giving advantages to certain persons that it not only withholds from others, but denounces in others. As said by Judge Simpkins, in delivering the opinion of this court in the case involving this question:

"In those occupations where the business implies a trust
48 or public duty the Government has the power to see that the trust is not abused and the duty is properly performed. On

this principle statutes have been upheld which regulate the charges of railway companies, elevator, telephone, telegraph, and other companies, hackmen, warehousemen, mills, etc., but we are aware of no well-considered case on which a statute has been upheld that undertook to regulate the dealings between employer and employé." (S. A. & A. P. R'y Co. *vs.* Wilson, 19 S. W. Rep., 913.)

In a case involving the right of the legislature to single out a class and prohibit such class from carrying on business on Sundays the supreme court of Tennessee, in holding such act unconstitutional, used this language:

"This act, if operative, is for the benefit of all individuals (barbers excepted) who may see fit to keep and use bath-rooms for profit. We know that all the best hotels have bath-rooms for the use of guests; that they receive pay for baths and permit them on Sunday; that in many cases a barber has his shop and bath-rooms under the roof and in parts of the building in which the hotel and bath-rooms are kept, occupied, and used. So, if the act is to be enforced as the law, it will apply alone to barbers, with its penalties and punishments, while the innkeeper may with impunity use and keep open his bath-rooms in the same floor and equally public. Under the act every other individual than one engaged in barbering may establish and keep open on Sunday any number of bath-rooms, and may even buy or rent those now used by the proscribed barber, in or out of the hotel building, continue its use as a bath-room, and keep it open on Sunday. The act falls strictly within the ordinance in its tacit but distinct and unequivocal reservation of rights, privileges, immunities, and exemptions to all classes of individuals except those engaged in the business of barbering, and upon this as well as upon the first ground it is void." Ragio *vs.* State, 6 S. W. Rep., 401.

As said by our supreme court, quoting from 2nd Yerg., 602, in discussing the term "law of the land:"

"They are now in their most usual acceptation regarded as general public laws binding all the members of a community under similar circumstances, and not partial or private laws affecting
49 the rights of private individuals or classes of individuals." Janes *vs.* Reynolds, 2 Tex., 252.

Judge Catron, in delivering the opinion of the supreme court of Tennessee, in an early case, used this language with reference to the matter under discussion:

"The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic or land under similar circumstances, and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were it otherwise, odious individuals or corporate bodies would be governed by one law, the most of the community and those who made the law by another; whereas a like general law affecting the whole community equally could not have been passed." Wally *vs.* Kennedy, 2 Yerg., 555.

The same judge, in passing upon the question in another case, has used this language:

"The right of life, liberty, and property of every individual must stand or fall by the same rule or law that governs every other member of the body politic or land under similar circumstances, and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. * * * The idea of a people, through their representatives, making laws whereby are swept away the life, liberty, and property of one or a few citizens, by which neither the representatives nor their other constituents are willing to be bound, is too odious to be tolerated in any government where freedom had a name. Such abuses resulted in the adoption of Magna Charta in England, securing to establish against odious exceptions, which is and for centuries has been the foundation of English liberty. Its infraction was a leading cause why we separated from that country, and its value as a fundamental rule for the protection of a citizen against legislative usurpation was the reason of its adoption as a part of our Constitution." Vanzant *vs.* Waddel, 2 Yerg., 270–'1.

The supreme court of Illinois, in passing upon the question whether it was competent for the legislature to single out owners and operators of coal mines as a distinct class, and to provide that they should bear burdens not imposed on other owners of property or employers of laborers, and to prohibit them from making contracts which it was competent for other owners to make, used this language:

"It is declared in section 2, art 2, of our Constitution that no person shall be deprived of life, liberty, or property without due process of law, and section 13 of the same article provides that private property shall not be taken or damaged for public use without just compensation. But the words 'due process of law' in this connection are held to be synonymous with the words 'the law of the land.' Cooley's Const. Lim. (1 ed.), pp. 352, 353. And this means general public law, binding upon all members of a community under all circumstances, and not partial or private laws, affecting the rights of private individuals or classes of individuals. * * * Every one, says Cooley, has a right to demand that he be governed by general rules, and a special statute that singles his case out as one to be regulated by a different law from that which is applied in all similar cases would not be legitimate legislation, but an arbitrary mandate, unrecognized in free government."

Mr. Locke has said of those who make the laws: "They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at plough, and this may justly be said to have become a maxim in the law by which may be tested the authority and binding powers of legitimate enactments." The same authority says: "The doubt might also arise whether a regulation made for any one class of citizens, entirely arbitrary in its character and restricting their rights, privileges, or legal capacities

in manner before unknown to the law, could be sustained. Distinctions in these respects should be based upon some reason which renders them important, like the want of capacity in infants and insane persons; but if the legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was per-
51 missible to others, that it can scarcely be doubted that the act would transcend the due bounds of legislative power, even if it did not come in conflict with express constitutional provisions. The man or the class forbidden the acquisition or enjoyment of property in the manner permitted to the community at large would be deprived of liberty in particulars of primary importance to his or their pursuit of happiness." Minnock *vs.* The People, 7 N. E. Rep., 631; S. C., same case, 117 Ill., 294.

The same author (Cooley), in discussing the question as to the law of the land, uses this language:

"On the other hand, we shall find the general rules may sometimes be as obnoxious as special if they operate to deprive the individual citizens of vested rights. While every man has a right to require that his own controversies shall be judged by the same rules which are applied to the controversies of his neighbors, the whole community is also entitled at all times to demand the protection of the ancient principles which shield private rights against arbitrary interference, even though such interference may be under a rule impartial in its operation. It is not the partial nature of the rule, so much as its arbitrary and unusual character, which condemns it as unknown to the law of the land." Cooley Const. Lim., 355.

This court, in the case of The S. A. & A. P. R'y Co. *vs.* Wilson, *supra*, has said:

"The doctrine is often stated that a statute is general and uniform in its operation and not subject to the objection of being class legislation when it affects equally all who are brought within the relations and circumstances provided for, though it may not operate on every citizen, but it by no means follows that the legislature have the right to impose any burden by simply placing it on all the individuals of a certain class. It must rest upon some reason upon which it could be defended. Unquestionably the legislature may subject any occupation, business, or class to reasonable regulations when required by public interest and welfare, but in all illustrations of the exercise of this power it will be found there was some circumstance of threatened damage to the public that required the regulation."

* * * * * * *

52 In the case of the Railway Co. *vs.* Baty, 6 Neb., 37, the court said "The 'law of the land' does not mean legislative act. If it did, every restriction upon legislative authority would at once be abrogated; for what more can a citizen suffer than to be

taken, imprisoned, disseized of his freehold, liberty, and privileges, be outlawed, exiled, and destroyed, and be deprived of his property, his liberty, his life, without crime? Yet all that he may suffer if an act of the legislature simply denouncing these penalties upon particular persons or a particular class of persons be in itself the law of the land, in the sense of the Constitution."

The circuit court of the United States for the district of Kansas, in passing upon this question, used this language:

"If it (due process of law) has no broader meaning than process prescribed by act of the legislature, it is the end of the case; but such a construction will render the constitutional guaranty sheer nonsense, for it would then mean no State should deprive a person of life, liberty, or property unless the State shall choose to do so. It has repeatedly and uniformly been adjudicated that the terms 'due process of law' and 'law of the land' have a broad and comprehensive meaning and originated in that great bill of rights, Magna Charta, and operated as a restriction on each branch of civil government." Murray's Lessee *et al. vs.* Hobokon Land & Improvement Co., 18 How., 272; Davidson *v.* New Orleans, 96 U. S., 107; *Ex parte* Virginia, 100 U. S., 346.

In the last-cited case the court, speaking of these words in the citation, says:

"They have reference to the actions of a political body denominated a State, by whatever instrument or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provisions, therefore, must mean that no other agency of a State or of the officers or agents by whom its powers are executed shall deny to any person within its jurisdiction the equal protection of the law. Whoever, by virtue of a public position under a State government, deprives another of property, life, or liberty without due process of law violates the constitutional inhibition, and, as he acts in the name of and for the State and is clothed with the State's power, his act is that of the State.
53 This must be so or the constitutional provision has no meaning." *In re* Ziebold, 23 Federal Rep., 791.

Perhaps the clearest exposition of the right of the citizen to equality under the law is laid down by Mr. Justice Field in the case of County of San Mateo *vs.* Southern Pacific R'y Co., in which this learned jurist said:

"The fourteenth amendment to the Constitution, in declaring that no State shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the State which can touch the individual or his property. * * * Whatever the State may do, it cannot deprive any one within its jurisdiction of the equal protection of the laws; and by 'equal protection of the laws' is meant equal security under them to every one, under similar terms, in his life, his liberty, his property, and in the pursuit of happiness. It not only implies the right of each to resort on the same terms with others to the courts of the country for the security of his person and property,

the prevention and redress of wrongs, and the enforcement of contracts, but also his exemption from any greater burdens or charges than such as are equally imposed upon all others under like circumstances." 13 Fed. Rep., 733.

We do not deem it necessary to pursue these quotations further. Sufficient has been adduced to establish the proposition that equality before the law is a fundamental principle of English and American liberty, which not only has been consecrated in all the latter-day constitutions, State and Federal, but that the principle has been guarded by the courts with a jealous and watchful care at all times, so that the citizen may have guaranteed to him this inestimable privilege and condition. We cite the court to other cases as follows which substantiate and illustrate the doctrine:

Hewitt *v.* The State, 25 Tex., 722.
Loan Association *v.* Topeka, 20 Wall., 655.
Holder *v.* James, 11 Mass., 396.
Lewis *v.* Webb, 3 Me., 320.
Simons *v.* Webb, 103 Mass., 572.
54 Baggs' appeal, 43 Pa. St., 512.
Durke *v.* City of Janesville, 28 Wis., 464.
People *v.* Hurlburt, 24 Mich., 44.
The State *v.* Goodwell, 10 S. E. Rep., 285.
The State *v.* Coal & Coke Co., 10 S. E. Rep., 288.
Goodcharles *v.* Wiggeman, 113 Pa. St., 354.
Wilder *v.* R'y, 38 N. E. Rep., 289.
People *v.* Common Council, 38 N. W. Rep., 470.
Chair Co. *v.* Reynolds, 43 N. W. Rep., 1006.
City of Janesville *v.* Carpenter, 77 Wis.
Gordon *v.* Building Association, 12 Bush., 110.
City of Shreveport *v.* Levy, 26 La. Ann., 671.
Ex parte Westerfield, 55 Cal., 550.
Clark *v.* Free Press, 72 Mich., 560.
Pierce *v.* City of Portland, 69 Me., 278.
R'y *v.* Morris, 65 Ala., 193.
R'y *v.* Morse, 60 Miss., 641.
Barbier *v.* Connoly, 113 U. S., 27.
Yick Wo *v.* Hopkins, 118 U. S., 356.
Dent *v.* West Virginia, 129 U. S., 114.
Virginia *v.* Rives, 100 U. S., 313.
Ex parte Virginia, 100 U. S., 339.
Strauder *v.* West Virginia, 100 U. S., 303.
State *v.* Loomis *et al.*, 22 S. W. Rep., 350.

As said by the S-preme Court, in an unanimous opinion, in speaking of due process of law and the equality of citizens:

"The great purpose of the requirement is to exclude everything that is arbitrary and capricious in legislation affecting the rights of the citizen." Dent *v.* West Virginia, 129 U. S., 124.

And as said by Mr. Justice Matthews in Yick Wo. *v.* Hopkins, *sup.*: "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed

to rest, and review the history of their development, we are constrained to conclude that they do not mean — leave room for the play and action of purely personal and arbitrary power."

55 The language of the Supreme Court of the United States in Barber *v.* Conoly seems to be so apposite that we may be pardoned for concluding our citation of authorities with this quotation from that opinion:

"These provisions are undoubtedly intended that there should be no arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses." 113 U. S., 27.

We conclude this branch of the argument in support of the proposition made at the outset, that this legislation does not come within any of the exceptions recognized by the judicial decisions of America. We do not mean to say by this that the State of Texas does not have power to prescribe regulations to promote the health, peace, morals, education, and good order of its people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity. From the very necessities of society, legislation, sometimes of a special character, having these objects in view must obtain in certain districts, and special burdens are sometimes necessary for general benefits, such as for supplying water, preventing fires, lighting district-, clearing streets, opening parks, and many other objects. As said by the courts, occasions for these purposes may press with more or less weight upon one than upon another, but they are designed not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little inconvenience as possible, the general good. Though in many respects necessarily special in their character, these in proper limitations do not furnish just

56 ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. The court will readily understand the distinction we are attempting to draw. This statute under discussion is clearly class legislation, discriminating against some and favoring others. It is not that character of legislation which, in carrying out a public purpose, is limited in its applications, and within the sphere of its operation affects alike all persons similarly situated. As we have shown hitherto, it may affect and does affect individuals of the same class in an opposite way—it favors some individuals of a certain class and

denounces other individuals of the same class. Perhaps the law would be less subject to criticism if it had exempted farmers and stock-raisers, constituting them a particular class necessary to be specially favored in the legislation of the State; but the law does not do this, and this is the extent to which any case has as yet gone, to wit, that the State, in the exercise sometimes of its police power, may exempt certain classes from the operation of a general law, and such exemption has been held valid. This statute exempts no class. To the contrary, it seeks to exempt certain classes of property, which is carrying the doctrine beyond any case to which we have had access. All property in the State is entitled to equal protection, and no special property is entitled or ought to receive any special favors. Discrimination may be as potent against the citizen in the direction of his property as if aimed directly against him personally. The right to hold or sell property and to make agreements and contracts concerning it which may be beli-ved by the owner to be for his betterment is the most essential right of property. With some citizens this right is taken away; with others it is encouraged.

For a year past the farmers of Texas and of the South have been engaged in the business of combining together to create or carry out restrictions in trade, and to limit and reduce the production of cotton for the purpose of increasing the price thereof, and also for the purpose of fixing the price at some standard or figure. To accomplish these objects they have made and entered into contracts, obligations, and agreements of various kinds and descriptions by which they have bound themselves to keep the price of cot-
57 ton as high as possible, and have settled or endeavored to settle among themselves to prevent a free and unrestricted competition among themselves or others in the sale of cotton. Their proceedings have been open and notorious and have been regarded favorably by people and State authorities, including prosecuting and executive officers, as commendable; and yet under this statute of 1889 the laborer who picks this cotton or the merchant who advances the money to enable it to be produced or the de*la*er who buys it in open market is forbidden to take any such steps in any manner directly or indirectly calculated to protect his interests as to the price of the commodity or to prevent impositions upon themselves in its purchase and sale. These combinations among farmers, strictly speaking, are not with reference to agricultural products in the hands of the original producers, because in its nature such action is anticipatory before the crop is pitched. The organization is perpetuating itself; it issues circulars broadcast all over the country stating its purposes and designs and advising the steps necessary to secure its objects long before the crop is pitched. Possibly under the terms of this statute their action does not contravene the law. We do not insist that it does, but what we do insist upon is that it furnishes a remarkable instance of absolute inequality before the law of the citizens of this State, in total disregard of the limitations and requirements of our constitutions, State and Federal.

* * * * * * *

We submit this remarkable record of a remarkable trial to this court without further comment or argument.

Many gross errors have not been referred to in this brief, but are apparent in the record. Counsel for appellant asks the court, in the interest of the criminal jurisprudence of this State, for a careful examination of the record in all its features and an exposition of the law which shall govern similar trials in future in our State. The judgment of conviction herein is invalid for scores of reasons, and counsel have no apprehension as to the result of this appeal. The need of the hour, however, is the re-establishment by this court of some of the essential landmarks of criminal jurisprudence applicable to this trial. We ask the judgment of the court upon
58 the essential and important assignments made herein, including the constitutionality and validity of the act of 1889 as well as the law governing interstate commerce. The people of Texas are at sea as to this class of legislation, and it is time the law should be expounded so that the citizen may know the rules which should govern him in the conduct of his every-day business. Immense property interests are at stake, and, in addition to that, the liberty of a citizen of Texas has been invaded wrongfully and illegally and he is now behind the bars of the common jail of McLennan county awaiting the result of this appeal. Conscious of his innocence, he submits his case and begs of this court his ample vindication from the record; and if by means of his vicarious atonement the laws of the State may be hereafter administered in consonance with truth, justice, and the Constitution he will be entirely satisfied.

C. P. & J. D. JOHNSON,
CLARK & BOLINGER,
Counsel for Appellant, E. T. Hathaway.

59 *Speech of Mr. Taylor, County Attorney, in His Opening Argument to the Jury.*

(As revised by the author.)

GENTLEMEN OF THE JURY: We have been engaged since last Monday a week in the development of a state of facts that have been gathered from all parts of Texas with a view of bringing them before this court upon an indictment filed by a grand jury in your county against persons named therein, alleging a violation of what is known as the "Texas anti-trust law." Trusts, gentlemen of the jury, in the sense in which they are now used in this case is a modern term. The fathers of this Republic knew nothing of them; they have been brought forth, formulated, discovered, created, invented, if I may use the term, in modern times; they are enabled to grow in this country and prosper and grow rich and laud it over the people of this country because the courts of the country have not had legislation formulated to meet them and to crush them; and, gentlemen of the jury, the officers of this country may burn midnight oil; they may ransack every neighborhood and every com-

munity in Texas; they may labor day in and day out for the purpose of procuring testimony and placing it before the jury, but the final action, in order to furnish the remedy and relieve the people, is in the jury-box itself.

Now, I suppose, gentlemen, you are pretty well posted as to what it takes to constitute a trust, because we have been describing it to you through the mouths of witnesses for a solid week, a state of facts that have shown with as much conclusiveness as any state of facts could possibly show that Texas is under an awful trust—that Texas is being dominated from one end of the State to another by as absolute and potential and powerful and effective and complete a combination as was ever invented by civilized man. Why, the law, gentlemen of the jury, that is written upon that statute book, and the amendment thereto, passed during the last legislature, which is about this one repeated, very little difference, the amendment having been made in order to reach insurance companies as well as dealers in commodities. That law was passed by the legislature of Texas for the purpose of enabling the authorities in this country to free the
60 people from the Standard Oil trust; and while the legislature of Texas, itself the law-making power of this State, realized and knew, understood and felt the power of this monstrous organization that was resting upon it, still when they come to draw the line in this court and try them, they set back upon their dignity; they write letters from their offices in the centres of power and wealth and civilization and they tell us, "We will sit here silent, holding within our vaults the evidence of our guilt or innocence, but we will not use it. We will sit here in the forums of the State of Texas in silence and say that we are not guilty, and that we are not members of any trust, and that we are merely innocent people being persecuted by the authorities, and we will get up before the juries and appeal to them that the case is not proven, and upon that ground we will ask them for a verdict of not guilty." Gentlemen, have you ever read the testimony of members of this combination taken before the various tribunals of the United States? If you have, you have found this, that the people who are organizing these gigantic schemes, that the people who have been able to squeeze out of the masses of the United States their millions, that the people who have been able, by their secret combinations, to pile up millions and millions of dollars in their own coffers, when they get before the authorities are the most ignorant creatures on earth. If I had an idiot boy that didn't know as much as some of these fellows don't know before congressional committees of the United States, I would take him out behind the house and kill him. They don't know anything; they are absolutely without any mental capacity to understand or to know anything when you ask them anything about their business. I reckon they draw a distinction between "knowledge" and "actual knowledge." I reckon they had been trained so that they can split hairs upon knowledge and actual knowledge. But there is one thing about them—that is, you can't get them to know anything. They have not got either any mental capacity or else they have forgotten everything they

ever did know, or something is the matter with them; something wrong. Knowing that fact, gentlemen of the jury, knowing that they wouldn't know anything, and they wouldn't even come here to Texas to tell what they did know—knowing that they didn't know anything, the legislature says that whenever one of these things
61 called a trust is formed, everybody who is carrying out its mandates, either as employés or agents, who are carrying out its mandates in this country, are original conspirators and should be punished as such. If you expect to get rid of them, you have got to find those guilty whom we can bring here and prosecute. You have got to start on them, and maybe, gentlemen of the jury, in the course of time, when honest men get into office, who will honor the executive warrants of Texas when they are sent to other States for the rich man as well as the poor man, if we ever get men in office in New York and in Missouri and in Florida who don't belong, body and soul, to the corporation- and combinations and trusts and who will honor the executive warrant that is sent from Texas—when we get men of that sort in office, we will have the original conspirators here and try them. But the power of money, gentlemen—why, gentlemen, the power of God has sunk into absolute insignificance in this country when compared to the power of Rockefeller. Talk about bringing to Texas to try him, the Flaglers, the Rockefellers, and the Pierces, and those fellows! Why, you can't get them out of their States. You can get a fellow who forges a note for $25.00 on the First National bank, a check, and — he goes to New York Mr. Culberson can get —. All he has got to do is to grant a requisition and send a copy of the indictment to New York, and Mr. Morton, the governor of that State, and Mr. Flower, the previous governor of that State, will execute his executive warrant and it will be served on a fellow that forges a note for $25.00 or that steals a $15.00 yearling, but when the great State of Texas formulates an indictment here in Texas against Rockefeller and a copy of that bill is sent to New York, one of the attorneys for that oil trust trots out on the street and laughs in his sleeve and says, "Ah! Some of that Southern socialistic legislation that we pay no attention to in New York." And Mr. Flower and Mr. Morton agree with him. "Socialistic legislation that is now prevailing in the Southern States." That's all the answer you will get. When they have formed a conspiracy here and are robbing the people of Texas each year out of two or three or four millions of dollars of hard-earned money and when the people's representatives pass a law and enact a law in this country for the purpose of
bringing these fellows here and saying that you shan't run
62 such a business here in this country, they are met with a flippant statement by some lawyer in New York that "it is socialistic legislation, and that therefore we will not pay any attention to it, and we will see that the governor of the State, who is our minion and tool, does the same thing." That being the case, gentlemen, how are you to reach them? You have got to reach them just as this law reaches them, by stating to them that we will penitentiary every man you send here to execute your decree, be-

cause the man who executes the decrees of a trust, I don't care whether he does it for a salary or not, is just as guilty as the man that forms it and pockets its proceeds, and if you gentlemen expect us to stop this thing and open the markets of this country to free competition you have got to send the people to the penitentiary who are executing the mandates of the trust.

Judge CLARK: We except to that line of argument. Note our exceptions.

Mr. TAYLOR: Isn't that so? That's the way they do all over the United States. They except to the truth; they file a bill of exceptions to the truth.

Judge CLARK: I have got a right to except when I think the laws have been violated, and I do it in a professional manner, and I do not propose to be commented on when I am following the law.

Mr. TAYLOR: You see, gentlemen of the jury, that when you commence to get next to them they begin to flinch.

Judge CLARK: I note another exception to that remark of counsel in his argument. I take another bill on that.

I stated, gentlemen, and I reiterated, that if the juries of this country—who were charged with the execution of this law, who are empannelled and sworn, and who represent the suffering people of Texas in this jury-box against this most gigantic combination that was ever organized on earth—expect to break it up, they have got to send the men who work for it to the penitentiary, in order that hereafter they will not be able to get anybody who is willing to go to the penitentiary for them. Take that man Clem. Why, gentlemen, Clem knew that the authorities of Texas knew something that he knew, and we had him between the devil and the deep, blue sea, but they gobbled up Clem just about the time the State began to
63 gobble him up, and they put him in employment at Dallas. How did they gobble him? They can gobble anything. There is nothing for them too big for them to gobble. They just gobbled his company. They had just as soon swallow a corporation as a man. It don't make a bit of difference how big the corporation or how small the man. There is nothing in the world that will stop them unless it be the walls of the penitentiary; that's all; so they gobbled Clem up, and before that Clem was weeping and wailing and gnashing his teeth, poor Clem, poor fellow! going, going, going down, down, down to destruction and death in business before the terrible power and influence of this combination. The Eagle Refining Company was then trying to be a competing company. It was trying to live in Texas and sell a little oil, but the more oil it brought here the nearer it starved to death. That's the way they did. If a fellow was to bring five gallons of oil in here and try to sell it, they wouldn't pay any attention to that, maybe. If he brings ten barrels, they will cut oil a cent. If he brings twenty-five barrels, they will cut oil 2 cents. If he brings a hundred barrels they will cut it three, and if he brings a thousand barrels they will starve him to death. They can do just what they please. It don't make any difference what it is. The Czar of Russia is a pigmy in

comparison to this organized institution in this country; so Clem's company thought discretion was the better part of valor, and in October, 1894, just a month before this bill was filed, Clem was in St. Louis. He was called to St. Louis to see Mr. Rose, the managing man of the Eagle Refining Company, and they walked down the street, and Mr. Rose goes up into the president's office of the Waters-Pierce Oil Company, and they come down, and Mr. Clem comes back to Texas, and during that time, Mr. Clem says, the Waters-Pierce Oil Company and this Eagle Refining Company made a trade, and he went to work for the Waters-Pierce Oil — under an alias of the Eagle Refining Company. About that time Mr. Clem sees an officer with an attachment to take him to Waco to tell what he knew. Knowing, as they did, that Clem knew enough to pen the whole business, they commenced then to find some way to keep Clem from telling what he did know. We got him on the stand here. I asked him—I says, "Mr. Clem, didn't you write a letter to the attorney general of Texas"—I knew I would have to commence that way if I got
64 anything—"in which you wer- making complaints that it was utterly impossible for you to live in Texas and do business in opposition to this grinding monopoly; that the Waters-Pierce Oil Company had established a trust and something had to be done to relieve the people?" "Yes; I did." "Well, was that true?" "Yes, sir; that was true," but it liked to have killed him. Did you see how near he came dropping out of his chair? He could hardly sit up; couldn't sit up straight. That man was sitting there in a court of justice, knowing the fact to be, as he said, that he must either refuse to testify to facts or loose his job. Now, if these people are so innocent—if they are not in violation of this law—why don't they walk up like men and tell it? Why are they hiding out all over the United States, and why don't they come here and face the music? Why don't they come here and tell it? Innocent men don't flee from honest courts. The State of Texas hasn't got the power to bring them here. Nobody is keeping them away from here, but they don't come. Not only will they not come themselves, *and* actually undertake to instruct a witness how to swear when the Texas grand jury gets hold of them. Here is the vice-president of this corporation, the Waters-Pierce Oil Company, who is sending instructions to his agent. It seems that from some cause or other it was known in the city of St. Louis on the 10th day of November, just eleven days before this bill was filed, and while the grand jury were investigating this case, it was known in the city of St. Louis what the grand jury in McLennan county were doing. It was known that the people of Texas were being aroused; that they had stood it as long as humanity could be called upon to stand anything; that they had submitted to wrong and tyranny and oppression and infamy and robbery till patience ceased to be a virtue and until the truth would have to come out or the people would have to force it out. What instructions does Clem get? A. M. Finley, the vice-president of this corporation, sends him the following instructions: "I judge from Mr. C.'s statement (that's Clem) and the clip-

ping from a Waco paper that the inquiry of him will probably be directed only to the company's methods of meeting and overcoming competition." Meeting and overcoming competition—methods of monopolizing trade, that's what that means; methods of destroying competition. Still here comes a voice from the citadel of power
65 itself. From the very throne itself upon which the monarch is seated comes a voice as to the methods of the company in meeting and overcoming competition, and still they undertake to prove by witnesses from all over the State of Texas that the markets of Texas were open. "Can't anybody come into your town who wants to sell oil?" Of course they can come in here and sell oil, but they won't have any oil in them when they get out of there; there won't be a drop of oil left in that fellow when he gets out of that town. A fellow likes to carry a little oil out as well as in. "Methods of meeting and overcoming competition in Texas." They talk about a State like it was a little bit of a ten-acre field. They can handle a State as well as you can handle a ten-acre field, and a heap better. "If this is so, he should have no difficulty in answering all questions without fear or embarrassment." Well, what is there to embarras- a man if he is going to tell the whole truth? There is nothing to embarras- a fellow because he is going before a grand jury if he is going to tell the truth. Listen. This is Finley talking now. Finley sent this letter to Clem as his (Finley's) instructions and Clem adopted them. Finley is the vice-president of the Waters-Pierce Oil Company. "Whatever the line of examination may be, however, he should not volunteer any information." Isn't it the duty, gentlemen, of every citizen of this country that has the welfare of the people at heart to volunteer information in order that courts of the country may get light against people who are violating the law? Isn't it the patriotic duty of every citizen that loves his country to give information to the authorities to enable the courts to formulate bills of indictment in order to stop violations of law? That is a part of the duty of the citizen. You must not volunterr, says Mr. Finley to Mr. Clem; don't volunteer any information; you just play hush just as much as you can; take care as near as you can; we are in a bad fix; take care of us if you can. "Nor disclose present relations of the company. To be sure, he will answer question- truthfully;" bound to. The truth must be told, but you mustn't volunteer to tell the truth, and if they get on the question of "meeting and overcoming competition" he ought not to get embarrassed. Whatever the line of examination should be, however, you should not volunteer any information nor disclose present relations of the company. To be sure, he will answer questions truthfully, but
66 you mustn't volunteer to tell the truth, but should only answer according to his knowledge of a fact, and knowledge of a fact means actual knowledge and not merely information or reasons or suppositions or beliefs, and if he is placed in a position where he has no alternative, if you get the man down to a corner so he has got to give us away, dodge behind the privilege and don't criminate yourself. Now, gentlemen, if there was not something there to give

away, if there was not something there upon which Clem was expecting to be questioned and that involved criminality, why should they be so careful? That letter which is indorsed and set out by Finley, the vice-president of this company, is an absolute confession, and ought to be so regarded by any honest jury on top of God's green earth. It is a confession of guilt; it stands here naked before this jury admitting the facts alleged in that bill, undertaking to hedge around the truth and keep it from the juries of the country. "When he has no other alternative than to divulge the facts or tell an untruth, he should decline to answer at all upon the ground that by so doing he might criminate himself; this he can consistently do, for if the existing arrangement"—arrangement! What is the existing arrangement? Why, they said there was not any connection between the Waters-Pierce Oil Company and anybody else; that it was an independent business in Texas; but when they are writing to their people, who are expected to be used as witnesses in this case, they say the "existing arrangement," and if it is a violation of the trust law you are just as guilty as the rest of us, and you had better watch, Brother Clem; you had better watch or you'll get yourself into the shackles. "For, if the existing arrangement is a violation of the trust law," he is liable with the others; he is as guilty as the balance of the gang. Well, that is true. Why, they say, we ain't got any law at all. I don't reckon, if we would allow these fellows to construe it, we would ever have any law; but the people of Texas are construing this law and the courts here. They want to go into the United States court to take it away from the people, in order that those who are suffering shall not have the opportunity to apply the remedy.

Judge CLARK: Does your honor think that the counsel is permitted to go out of the record in any such style? We raise the objection that he is entirely out of the record. There is no
67 evidence that this case has ever been intended to go to the United States court, and couldn't be removed under the law.

The COURT: The court has already settled that.

"I do not mean to say that the law has been violated in any respect, but it is desirable to avoid, as far as possible, disclosing any such facts upon which such charges could be based by competitors." And I say, gentlemen, that this letter that Finley has sent down here came from the very sanctum *snac*torum of power, from the place where brotherly sympathy or humanity has never entered; where nothing is seen or regarded but the clink of the dollar, and it is absolute evidence of guilt, and there is not a man on earth who understands language but what knows it. I asked Mr. Clem when he was on the stand, and you remember Mr. Clem, who was at that time working for this company, says that it was the policy of the Standard Oil trust to control the manufacture and sale of oil in this country; and he further stated the policy of the Waters-Pierce Oil Company. In answer to the question if he was acquainted with the acts and doings of that company, he says that the policy of that company, in case competition should come within its territory, was

to cut prices to such an extent as to drive out competition, and after competition was driven out that its old prices were restored; and further stated that — policy of the company and its instructions to the agents was not to sell any oil to those who dealt with competing companies. So they not only fixed the price, but stifled competition; but there was another witness here, gentlemen of the jury, who told you that he had made a trade with the company. I do not remember his name, but you will remember the facts. He comes here and says he made a trade with the Waters-Pierce Oil Company's agent by which he was to take oil at 10 cents, but bind himself not to sell to anybody at any other price except two gallons for a quarter, and he was not to let anybody that bought oil from Waters-Pierce Oil Company's competitors have a bit of oil, thus fixing not only the price of buyin-, but also the price of selling. If that was not establishing a standard of price, what do you call it? There is another contract in this record with a witness. He made a contract in which he agreed to take Waters-Pierce oil at a certain price, and put up a forfeit of $25.00 in order to insure that they would let him
68 have it for a certain price if he would deal with them exclusively for a certain length of time. What was Echols' experience? Echols tells you, gentlemen of the jury, that he went down here to Temple and tried to start an oil business. Why, Echols is a brave man. I am surprised that he ever tried it. I would not have tried it. If I had five millions of dollars I would not have tried it. What is five millions of dollars? What is five millions of dollars to these folks? Why, it don't amount to anything; not a thing; but Echols concluded that he would try to do business in Temple. He went down there and he put his little money he had, twelve or fifteen hundred dollars. I know you think he is a fool, and I am not surprised if *the* was a fool. He knows he was a fool now; we all know it. He went down there alone and started an oil business. I will tell you why he was a fool. He thought this was a free country. He had heard people talk about Thos. Jefferson, and he thought this was a free country. He had heard that there is such a thing as a Constitution of the United States and of all men being free and equal and all this sort of things that formed a part of the basic principles upon which this Government was founded, and the writings of the fathers are full of such sentiment as that. Echols thought that this was a free country, but Echols was a fool. This is not a free country. This is a country absolutely owned and controlled by that combination of which the Waters-Pierce Oil Company has got it allotted here just like he owned it and was farming it. So he went down there and built him a tank. The first thing that he knew his oil was costing him 16 cents and other oil was 18 cents, two cents difference. The next thing Echols knew oil was cheap. He didn't know what in the thunder was the matter with oil. All they had to do was to touch a button in New York city and oil would drop to a cent a gallon if they wanted it to (referring to the Waters-Pierce Oil Company); nothing but a button; touch a button in New York city and oil would drop

down to 10, or 5, or 15 cents; touch a button in St. Louis and it would go to one-half a cent a gallon; touch a button in St. Louis again and it would be given away; don't make a bit of difference with them, because somebody said they could put it down in Temple and up somewhere else, and it would amount to the same thing to the company. Of course, when they get absolute control of
69 a country and can put oil at 5 cents in Temple and put it up somewhere else what difference does it make with these fellows. They have got the earth and the fullness thereof and everything in it. So Echols goes down there and actually undertakes (being nothing but a man)—he undertakes to run an oil business in Temple, and he kept a-swinging to it a little while. He was a bold fellow. He would order some oil and he would drop down his figures a little. As he would drop down they would cut a little lower down—they would go a little lower. They call that competition. It is no such thing. It is monopoly. That ain't legitimate competition. That is a course of procedure inaugurated by them to stifle competition. Why, they come before the courts and say, "Ain't a man got a right to ask what he pleases for what he has got?" Yes; provided he is not asking what he pleases for a purpose. He has got no right to get complete control of a commodity and go into the market and ask what he pleases for it with intent and purpose to drive everybody else dealing in that article out. It is an old maxim that you must use your own so as to not hurt another. If you adopt a policy in your dealings that is intended to destroy the rights of other people, then you are violating the principles of your Government and you are violating the laws of your State—that is what you are doing. They say, "Can't a man do what he pleases with his own? If he wants to sell oil at 10 cents a gallon he has got a right to do it." Yes; provided he is doing it in the right sort of way and for a right sort of a purpose. Echols went there, as he says, with the intention of doing a legitimate business, and oil was higher than it ought to be and he thought he ought to have a right to do business. He went into that market and they cut until they cut down six or eight cents, and finally Echols says, I had to quit. Yes; of course, he had to quit. They took that man up when he was trying to make an honest living—trying to do an honest business—and put him upon a gridiron and they poured Waters-Pierce oil on him and they put a match to him and broiled him until all the juice was out of him. They burned him until they owned his plant and everything else connected with his plant.

Do you remember the story that was told by Lewis or somebody in Lockhart? They bought some oil there and the Waters-
70 Pierce Company sent an agent up from Galveston by the name of Keenan, who, it seems, was manager of their company. He was overseer of that part of the Waters-Pierce oil plantation, and he comes and appears in the market, and he goes to this witness, and he says, I understand that you are buying oil from Rice, or from some other competing company. "Yes; I thought I would buy a little." "Well, that won't do." "Why, Mr. Keenan,

it seems to me that there is nothing peculiarly sacred about the Waters-Pierce business. Everybody has competition, and why don't you?" "That is so; and my individual opinion is that it ought to be that way, but it ain't." The Waters-Pierce Oil Company don't intend to permit any competition, and it is going to control the price of oil in Texas. It doesn't make any difference what it costs. That's the overseer talking to the slave. Slavery was not abolished in 1865. We read in history that it was abolished, but the immense power of combined wealth that has been inaugurated in the United States since is establishing over this country as galling a system of slavery as that which existed prior to 1865. Tear out from your books all these maxims of liberty and all these principles of liberty that have been written in there and come square down and look the facts right in the face and admit that you are a slave. Cross your hands and let them put the shackles on you, because if a man is going to control me in my business I had just as soon he would control me in anything else. The execution of the law is in your hands. The State of Texas may put its machinery to work; it may go down into its treasury and pay its money to procure testimony; it may employ its officers to break up these combinations, but if the juries of this country fail to do their duty she stands as powerless before these corporate trusts as a new-born babe. They put the defendant on the witness stand in this case, and he tells you that he don't know Rockefeller; he don't know this and that and the other; that he has not got anything to do with it. If you believe from this testimony—and you cannot doubt it, because nobody is disputing it—that the Waters-Pierce Oil Company is engaged in a combination in this State—I don't care who that combination is with—and that the purposes of that combination are to control and monopolize the price of kerosene oil, and if you believe that Mr. Hathaway *has* is acting under its direction and is carrying
71 out its policies in Texas—and the testimony on that is conclusive and undisputed, admitted by himself—if you believe that—it doesn't make any difference who the defendant is or where he came from—it is your duty to find him guilty. I haven't got time to go over all this testimony, but you take Vogel's testimony; take those letters—Keenan's letters—that show the policy of this company. They show that their agents are all pursuing one line. There is no difference whether the man be in Nort- Texas or whether he be in McLennan county or San Antonio or Austin or Lockhart or in Houston or anywhere in this great and glorious State. The same line of conduct is adopted, and it comes from some central head, and where you get the instructions of one you get the instructions to all. Here is the general instructions to all agents. (Here Mr. Taylor read the circular "To all agents.")

Whenever a fellow begins to sell oil, here goes the circulars: "To all agents" of this State: Look out for that fellow, boys; he is about to try to compete with our master. Look out for him. "Please look out for him, and should he visit your town take immediate steps to prevent him from taking any orders." Don't make any difference what part of the plantation that fellow got onto—whether

he got on Hathaway's plantation or Hawkins' moral vineyard, or whether at Galveston or at Forth Worth; it don't make any difference; the rules of the company were the same.

All Hawkins had to do in Waco was to walk into a store and every fellow would begin to tremble, because here came the representative of the most monstrous monopoly that the world ever conceived of. "You know the rules." "Yes; we know them;" and they did. You can hardly get these fellows here to tell on them; they are afraid the Waters-Pierce Oil Company will water the oil and make them buy it. They are writhing in the jaws of a monster and they do not know what to do with themselves or their business, and all Hawkins had to do was to step right out of the Methodist church or some other place and step into one of those stores and say, "You know the rules, boys; you had better come to time," and they came to time; and so it is. "Please look out for him, and should he visit your town you will take immediate steps to prevent him from taking orders by following out the instructions given you by Manager Finley in a recent circular." What do you think of that? What do you think of a community that has such a thing as that? Ought you to punish it? You don't deserve to be a freeman if you don't. "Also please advise us by wire should Mr. Wagner visit your town." Every time that Wagner, who was representing the Rocky Mountain Oil Company, got into a town the Western Union wires got hot, and they staid hot until Wagner left, and they staid hot until all Wagner's oil left, and they staid hot until this monopoly had rehabitated itself—put itself back into the absolute and complete control of the business in that town. It is so. Here is another letter. If we had some letters that they have got stuck away we would open the eyes of the people of this great State.

(Here Mr. Taylor read the letter addressed to agent at Velasco.)

"But those who buy rice oil won't get any protection." Now, that is so. Here is another one. Now, listen here. This comes from the manager, A. M. Finley. Still they tell you that they are not trying to create restrictions in trade and monopolize prices of this product. "Dealers who buy at these figures must agree to retail brilliant at two gallons for a quarter." You must make these people agree to sell at a bit a gallon, if you let them have oil at these figures. Do you suppose that they were animated by any love of humanity in making oil cheap there? Have you ever heard of that sort of a gang ever having any love for the human race? Do you suppose that these instructions that come from headquarters were in the interest of the people of Texas? No; it was for the purpose of putting oil at retail prices in that market cheaper than the wholesale figures at which it was being sold by competitors, for the purpose of getting absolute control of the market. "Dealers who buy at these figures must agree to retail at two gallons for a quarter. These figures will cause our competitors loss." I could go on here and recite just such cases as these in evidence from now until tomorrow evening. It goes to show absolutely and conclusively that these people have undertaken

to monopolize and control and regulate the price of oil in this State. Competition was a great theme with them. Every movement that they made, every turn that they made, all the letters that they wrote, all the circulars that they dictated, everything, as if by one common consent, throughout the State of Texas, through all the divisions and subdivisions, and through all the local agencies, one voice only came, and that was, "Stifle competi-
73 tion, drive out competition," and in order to do it we put at your back a power of two hundred millions of dollars of wealth. This is the way it is being done, and this is the way it is being successfully maintained. Remember what Voss said about his efforts to do business in Gatesville. He finally went in with them and made a contract. Now, gentlemen of the jury, I have given you only a skeleton of the immense amount of testimony introduced in this case. I have done my duty as far as I understand it. The State of Texas has used all its efforts to get testimony before a jury of McLennan county in order that we may make a test case—to see whether this trust law amounts to anything or not. If this party is not guilty here we had just as well tear that trust law up. If he is not convicted, there is no use in wasting our substance on any more desert air. If he is not convicted can't any of them be convicted, because his guilt hangs upon the question of his agency of the Waters-Pierce Oil Company, and that makes him a co-conspirator in the whole business; and if you cannot reach the agents of this trust, just turn the trust loose—let her go, Gallagher—and quit talking about it. Submit; put your necks under the yokes, and if it does rub the hide off, grin and bear it, because there is no use of our undertaking to work our lives out in getting evidence before the jury unless we have got a case here. If we have not any case here, there never was or never will be one in the State of Texas. If there is no case here, there can't be one made under that law; ain't no use in being mealy-mouthed about it; that is the God Almighty's truth, and anybody that knows anything about this evidence knows it is the truth. We have brought it here—we have arrayed before you facts and figures that cannot lie. We have demonstrated to you an absolute monopoly of oil in Texas. We have demonstrated to you every single thing that is required to be demonstrated in an investigation of the violation of that law. We have the decisions of the courts of Ohio declaring this Standard Oil trust illegal; we have our own statutes; we have the decision of the supreme court of the State of Texas holding that the trust law is good; we have got all the facts before this jury that human ingenuity and the power of the State of Texas can bring, and it remains for you to say whether this system shall be perpetuated or whether you will break it up. Individuals should cut no figure
74 in it. What is one man compared to the great public weal? What is one man compared to the protection of the entire State? What is he? You must let it be known that if men accept employment to carry out the purposes and policies of this institution in Texas they are subject to the punishment of the State of Texas. Why should they be exempt? The law says, if any man

acts as agent for any person or under his employment, he is guilty. If I am in the State of Missouri and I hire a man to come in the State of Texas to carry out my instructions and commits a crime, and he does it, I am guilty of the crime, and so is he. Why are you going to make a distinction here? Is it any less culpable for a man to be employed to carry out the behests of the combinations that are squeezing out of this country three millio-s of dollaes per annum? Away with sentiment and sympathy and let us have a law executed in this country in the name of common sense. If you expect the courts and the law to be respected, you, gentlemen of the jury, must carry the laws into execution. We cannot do it; it is utterly impossible for us to do it.

Now, gentlemen of the jury, I am going to close. I have done all that the law requires me to do. The balance is for you, after hearing the argument of the counsel and the charge of the court. But, as far as I am concerned, I have no fears but that you will do what appears to be your duty as honest men, placed here and given the responsibility of executing this most important statute.

75 *Copy of Opinion of Court of Criminal Appeals in the Case of Hathaway vs. The State of Texas.*

E. T. HATHAWAY, Appellant,
vs.
THE STATE OF TEXAS, Appellee. } No. 938. 5th Assignment. Appeal from McLennan County.

Opinion.

Appellant was convicted of engaging in a conspiracy against trade and his punishment assessed at a fine of fifty dollars and prosecutes this appeal.

1. The indictment is in six counts. The first count is as follows:

"That in said county of McLennan, State aforesaid, on or about October 1, 1894, John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbold, Benjamin Brewster, Henry H. Rogers, Wesley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruet, E. Wells, William Grice, E. T. Hathaway, and F. A. Austin did unlawfully agree, combine, conspire, confederate, and engage, with William E. Hawkins and divers other persons to the grand jurors unknown, in a conspiracy against trade, then and there, with the said William E. Hawkins and the said other persons, creating a trust, by combination of their capital, skill, and acts with the said William E. Hawkins and other persons, for the purpose, design, and effect to create and carry out restrictions in trade, to wit, in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils, the same being commercial commodities, by keeping the price of said oils at a certain price per gallon and at a certain price as otherwise sold, which price was far above the true market price of said oils,

and for the purpose and effect to pr-vent competition in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils, and to limit and reduce the production of said products and to raise the price thereof above the true market value, and cause the same to be purchased by the actual consumers at a great price above the true market value, and to prevent competition in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils, the same being commercial commodities and products of prime necessity to the people and for the purpose and effect to fix at a certain standard and figure the price of petroleum, petroleum oils, all the products of petroleum, illuminating oils, and lubricating oils, whereby the price- thereof were and are established and fixed in said county of McLennan at a fictitious value greatly in excess of the true market value; and the said John D. Rockefeller, William Rockefeller, Henry M. Flagler, Benjamin Brewster, John D. Archbold, Henry H. Rogers, Wesley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruett, E. Wells, Wm. Grice, E. T. Hathaway, and F. A. Austin did then and there uniawfully make and enter into a trust, combination, contract, agreement, obligation, and conspiracy with the said William E. Hawkins and other persons in said county, and all of said persons did agree, combine, conspire, confederate, and engage with each other and among themselves that they would not manufacture, produce, sell, trade, and ship petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils below a certain price, which price was and is far above the true market value of said commercial commodity, and that they would fix and keep the price of said oils in said county at a certain price and graduated figures, and that for the purpose of establishing and setting the prices of said oils amongst themselves and to
76 preclude and destroy free and unrestricted competition in the manufacture, production, sale, trade, and shipments of said oils they agreed to pool, combine, and united their interests in the manufacture, production, trade, and shipment of said oils, so that the price thereof would be affected and fixed at a certain figure, against the peace and dignity of the State."

So far as this appellant is concerned, the four succeeding counts are similar to the first count above quoted. The sixth count is as follows:

"And the said grand jurors aforesaid upon their oaths in said court do further present that on or about the second day of January, A. D. 1892, many corporations, partnerships, firms, and individuals controlling, owning, and operating 95 per cent. of the capital invested in petroleum, its products, refined oils, illuminating oils, and lubricating oils, and in the manufacture, sale, and transportation thereof, met at some place in the United States to the grand jurors unknown, and organized themselves into a trust, combination, conspiracy, and confederation with each other and among themselves to organize a monopoly to control the oil trade in the

United States; that there were about 39 corporations, partnerships, firms, and individuals who entered into and bound themselves by said trust, combination, and agreement, and that they were scattered over many States of the United States, and owned, controlled, and operated almost the entire petroleum-oil industry of the United States, and that the purposes of said trust, conspiracy, combination, and agreement were to organize said corporations, partnership-, firms, and individuals into an agreement, combination, and trust to be known as the Standard Oil trust, for the purposes of mining, manufacturing, producing, refining, and dealing in petroleum and all of its products and all the material used in such business, and transact other business collateral thereto, and for such other purposes and powers as should be embraced in the several charters, such as should seem expedient to the parties thereto *and for such other purposes and powers as should be embraced in the several charters, such as should seem expedient to the parties thereto* procuring charters; that, aside from the ostensible purposes already mentioned, the agreement, conspiracy, and trust were created and organized for the purpose of absorbing and controlling and monopolizing the petroleum-oil industry of the United States, and that said thirty-nine corporations, partnerships, firms, and individuals also entered into and organized said agreement, conspiracy, trust, confederation, and combination known as the Standard Oil trust, for the purposes of, first, creating and carrying out restrictions in trade; second, of limiting the production and increasing the price of petroleum and its products, the same being a commercial commodity; third, of preventing competition in the making, manufacture, and transportation and sale of petroleum oil and its products; fourth, of fixing at a certain standard and figure the price of petroleum oil and its products, whereby their prices to the public would be controlled and established, and said products being of prime necessity to the people for use and consumption; fifth, for the purpose of binding themselves not to sell, dispose, and transport petroleum oil and its products at a fixed and graduated figure, and to establish and settle the price of petroleum and its products at such figures so as to preclude a free and unrestricted competition in the making, manufacture, sale, and transportation of petroleum and its products, and for the purpose of pooling and combining their interests in the making, manufacture, sale, and transportation of petroleum and its products in such a manner that the price thereof would be affected, the said petroleum oils and its products being an article of trade and commercial commodity; that each of said corporations, partnerships, firms, and individuals agreed among themselves and with said trust to form in the States where they were respectively domi-
77 ciled a corporation known as 'The Standard Oil Co.' of the State where formed, and to become a part of the trust known as the 'Standard Oil trust,' and that many such corporations, in pursuance of such agreement and trust, became a member and part of said 'Standard Oil trust.' The corporations, firms, individuals, and corporations formed in pursuance of the

agreement mentioned agreed to transfer and assign, and did transfer and assign, all their stock to nine trustees of the 'Standard Oil trust,' to be held by said trustees indefinitely; that said corporations, firms, and individuals agreed that nine trustees should be appointed to take charge of, control, and operate the affairs of the 'Standard Oil trust,' and that a certain number of trustees should be elected annually after the election of the original trustees; that said trustees were required, empowered, and authorized to issue trust certificates to said corporations, partnerships, firms, and individuals in consideration for their said stock delivered and transferred to said trustees; that the value of said trust certificates so issued amounted to many millions of dollars; that the general office of said 'Standard Oil trust' should be in New York city, and that the headquarters and general offices of the said nine trustees should be and remain in New York city; that the said corporations, partnerships, firms, and individuals then and there, on the 2nd day of January, 1882, agreed and contracted that the 'Standard Oil trust' should be perpetual, and that it has existed since said agreement and trust, and that its general offices and headquarters and the general offices and headquarters of the said trustees are now situated and located in New York city, State of New York, pursuing and carrying out the purposes of said trust, conspiracy, combination, contract, and confederation, as hereinbefore detailed and stated; that said trustees are now engaged in carrying out, enforcing, and executing the terms and provisions of said trust, combination, conspiracy, and contract between said corporations, partnerships, firms, and individuals, and said 'Standard Oil trust' is now in full force and effect and have been since the 2nd day of January, 1882, controlling, managing, and directing ninety-five per cent. of the capital invested in the petroleum industry, and that the value of said trust certificates now in existence is about $200,000,000; that the trustees of the Standard Oil trust now in office are composed of the following-named persons, to wit, John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbold, Benjamin Brewster, Henry H. Rogers, and Wesley H. Tilford, and that said trustees are now carrying out, enforcing, and executing the trust agreement and conspiracy hereinbefore set out; that said trustees have divided the market for petroleum oil and its products into various subdivisions between the members of the 'Standard Oil trust,' allotting to each corporation, firm, member, or individual of said trust a certain State or States in which to have the exclusive right to sell petroleum oil and its products; that the Waters-Pierce Oil Company, a corporation domiciled in the State of Missouri, has been allotted the market and territory lying in the States of Missouri, Arkansas, Louisiana, and Texas, and had the exclusive right to sell petroleum oil and its products in said States, and that the other members of said 'Standard Oil trust' are bound by said trust not to invade said territory and sell therein; that the Waters-Pierce Oil Company has the exclusive right to sell petroleum oil and its products in Texas and in McLennan county, Texas; that the officers of said Waters-Pierce Oil Company are as follows: Henry Clay

Pierce, president; Arthur M. Finley, vice-president; C. M. Adams, treasurer; J. P. Gruet, secretary, and E. Wells, auditor, and that Arthur M. Finley, vice-president, lives in Galveston, State of Texas; that said trustees of the said 'Standard Oil trust' and said officers of the Waters-Pierce Oil Company, in pursuance of the trust, agreement, and conspiracy hereinbefore set out, have subdivided Texas into four grand divisions in which to sell oils of the Waters-Pierce Oil Company, and have appointed an agent for each grand division and many local agents for the various towns and counties of Texas to sell their said oils; that said various local agents are acting under the supervision, direction, and orders of said trustees and said officers of the Waters-Pierce Oil Company and send daily reports of their said sales of oil to said trustees and officers; that William E. Hawkins, among many others, is the representative and local agent in McLennan county, State of Texas, and by agreement is acting with, conspiring, and confederating with said trustees of the Standard Oil trust and the said officers and agents of the Waters-Pierce Oil Company, and is carrying out, enforcing,
78 and executing in McLennan county, State of Texas, all the provisions, terms, and stipulations of said trust, conspiracy, contract, combination, and confe*red*ation, and was doing so on the first day — October, 1894; that on or about October 1, 1894, in McLennan county, State of Texas, in strict pursuance of and in accordance with said designs, agreements, trusts, combination, and conspiracy, contract, and confederation and to carry out and execute said purposes, as hereinbefore detailed and set out, John D. Rockefeller, Henry M. Flagler, Wm. Rockefeller, John D. Archbold, Benjamin Brewster, Henry H. Rogers, Westley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruet, E. Wells, William Grice, E. T. Hathaway, F. A. Austin, and Wm. E. Hawkins did unlawfully agree, combine, conspire, and confederate with each other and among themselves and with divers other persons in McLennan county, to the grand jurors unknown, in a conspiracy against trade, then and there creating a trust by a combination of their capital, skill, and acts with each other for the purpose, design, and effect to create and carry out restrictions in trade, to wit, in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating oils, and lubricating oils, the same being articles of trade and commercial commodities, by keeping the prices of said oils at a certain price per gallon or at a certain price as otherwise sold, which price was far above the true market price of said oils, and for the purpose and effect to prevent competition in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all the products of petroleum, refined oils, illuminating and lubricating oils, and to limit and reduce the production of said products, and to raise the price thereof above the true market value, and to cause the same to be purchased by the actual consumers at a great price above the true market value, and to prevent competition in the manufacture, production, sale, trade, and shipment of petroleum, petroleum oils, all their products, refined

oils, illuminating and lubricating oils, the same being commercial commodities and products of prime necessity to the people, and for the purpose and effect to fix at a certain standard and figure the price of petroleum, petroleum oils, their products, refined oils, illuminating and lubricating oils, whereby the prices thereof were and are established and fixed in the said county of McLennan, State of Texas, at a fictitious value greatly in excess of the true market value, and did then and there unlawfully make and enter into and make a trust, combination, contract, agreement, obligation, and conspiracy and did unlawfully agree, combine, conspire, confederate, and engage with each other that they would not manufacture, produce, sell, trade, and ship petroleum, petroleum oils, their products, refined oils, illuminating and lubricating oils, below a certain price in McLennan county, State of Texas, which price was and is far above the true market value of said products, and that would fix (and did fix) and keep the price of oils in said county and in said State at a certain price and graduated figure, and that for the purposes of establishing the prices of said oils and to preclude and destroy free and unrestricted competition in the manufacture, production, sale, trade, and shipment of petroleum, its products, refined oils, illuminating oils, and lubricating oils, all the said above-named persons agreed to pool, combine, and unite their interests in the manufacture, production, sale, trade, and shipment of said products and oils, so that the price thereof would be affected and fixed at a certain figure, and the prices of said oils were affected and fixed at a certain figure, and free and unrestricted competition in said oils, products, and articles of trade was prevented and destroyed; the prices of said oils were fixed and established and free and unrestricted competition prevented in the following manner, to wit: All the above-named persons, in connection with divers other persons to the grand jurors unknown, would bring their oils into the various towns of Texas and into McLennan county, State of Texas, and where they found competition in the sale of their oils would immediately cut prices far below a profitable selling price and would not sell their oils to any dealer who would not agree not to purchase any competitive oils, and by reason of their immense power, wealth, fortunes, trusts, mutual combinations, and monopolies keep said prices at said
79 unprofitable figures until all competition had been crushed and destroyed and all competitors had fled the market and towns of said State and McLennan county, when they would raise the prices of their oils far above the true and honest market prices and exact unreasonable and exorbitant prices from the actual consumers, and then and there keep fixed and established said prices; that in the manner, by the methods, and through the trusts hereinbefore described the said persons have carried restrictions in trade, increased the price of petroleum, its products and oils, and have destroyed competition in the manufacture, sale, and transportation of oils, and have fixed the prices of oils at a standard figure so as to control the price thereof to the public, and have pooled, combined, and united their interests in the manufacture, sale, and

transportation of oils in such a manner as to affect the price thereof, and have greatly increased the prices of oils to the people in McLennan county, State of Texas; that the Waters-Pierce Oil Company, acting with said trust, controls and manages 99 per cent. of the oil business in Texas, and that said business amounts to a half a million barrels annually, against the peace and dignity of the State."

This indictment was framed under the act of March 30th, 1889. The clause of said act under which it was framed reads as follows:

"Art. 981. Any violation of either or all the provisions of this law shall be, and is hereby, declared a conspiracy against trade, and any person who may be or who may become engaged in any such conspiracy or take part therein or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant, or employé, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty dollars nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than ten years, or by either such fine or imprisonment. Each day during a violation of this provision shall constitute separate offense." (See art. 981, new Rev. Code Crim. Pros.)

This act, according to the construction we place upon it, constitutes two distinct character of offenses. The first portion thereof makes all persons who may be or may become engaged in a conspiracy against trade, or who take a part therein or aid or advise in its commission, offenders. The latter portion of said act makes those criminal who shall, as principals, managers, directors, agents, servants, or employés, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders thereunder or in pursuance thereof—that is, two or more persons may enter into a conspiracy against trade and become liable thereunder criminally, and others, after the conspiracy has been formed, may enter into said conspiracy and become amenable as co-conspirators with those originally forming the trust or combination, and after a conspiracy against trade has been formed any persons, though not himself a conspirator, if he shall, as principal, manager, director, agent, servant, or employé, carry out
80 the purposes, prices, rates, or orders of such conspiracy, then he becomes a violator of this statute. But it will be noted that in order for the latter to become amenable he must knowingly serve the trust in one of the capacities mentioned—that is, he must know that the trust or conspiracy against trade has been formed, and with such knowledge he must serve the trust in some capacity in carrying out its purposes—that is, he may be a conspirator, and then he may serve the trust in the capacity of an agent or servant, and in such case an indictment charging him simply as a conspirator, with proof that he was such, would be maintained, notwithstanding the evidence also showed that he was an agent or servant of the company. In the case at bar it will be noted that there is no count that charges appellant as an agent; all charge that he was a

party to the conspiracy, either as an original party or one who attached himself to it after its formation. This being the case, to sustain the conspiracy the proof must show that he was an original party to the conspiracy or that he joined it after its formation. Proof that he was an agent would not be sufficient, unless it went further and showed that he knew of the conspiracy. In order to convict a persons of being an agent of a conspiracy, such as described in the statute, the indictment must allege that fact, and must also allege that he knew of the conspiracy. Upon the trial of this case all proof which tended to show the agency of appellant was absolutely worthless without the further proof that he knew of the conspiracy.

The statement of facts contains a little over two hundred pages of typewritten matter, and we have given the same a thorough examination, and there is no evidence showing that the defendant was one of the original conspirators composing the trust or that he afterwards entered into and joined said conspiracy.

The sixth count in said indictment charges John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbold, Benjamin Brewster, Henry H. Rogers, Wesley H. Tilford as being the trustees of the Standard Oil trust, now carrying out the provisions of said trust. It alleges that thirty-nine corporations, partnerships, firms, etc., went into and compose said trust, and that it was formed in the year 1882 and still
81 continues; that the Waters-Pierce Oil Company, a corporation of the State of Missouri, was one of the corporations that entered into said trust and formed a part thereof, and that Henry Clay Pierce is president; Arthur M. Finley is vice-president; C. M. Adams, treasurer; J. P. Gruet, secretary, and E. Wells, auditor. And it further charged that John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbold, Benjamin Brewster, Henry H. Rogers, Wesley H. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruet, and E. Wells (the same parties alleged to compose the Standard Oil trust and the Waters-Pierce Oil Company), together with William Grice, E. T. Hathaway, F. A. Austin, and William E. Hawkins—the first three divisions agents in Texas of the Waters-Pierce Oil Company, and the latter, Wm. E. Hawkins, the local agent of said Waters-Pierce Oil Company in McLennan county—did unlawfully combine, conspire, and confederate with each other and among themselves and with divers other persons in McLennan county, Texas, to the grand jurors unknown, in a conspiracy against trade, etc.—that is, it would appear that the conspiracy is charged to have been entered into between the trustees of the Standard Oil trust and the officers of the Waters-Pierce Oil Company and three of the division agents in Texas and one of the local agent-, to wit, Wm. E. Hawkins, of McLennan county. There is some proof in the record to the effect that the trust was formed as early as 1882, between some thirty-nine corporations, firms, individuals, and partnerships, and that the first seven named conspirators were the trustees of said trust or combine, which was known as the Standard Oil trust, and

there is some proof in the record that the Waters-Pierce Oil Company was a party to said trust, but aside from the fact that E. T. Hathaway was the agent of the Waters-Pierce Oil Company in Texas, we fail to find any evidence in the record that he was one of the original conspirators or that he entered into the conspiracy at any time after it was formed. Of course, as stated before, the fact that he was an agent, if the proof went further and showed that he was also a party to the conspiracy, would not absolve him from amenability to the law.

We will notice those portions of the record which refer to Hathaway. Hiram Brooks, witness for the State, testified that he lived in Denison, Texas; that he knew defendant Hathaway and
82 that he was known as the agent of the Waters-Pierce Oil Company in Denison; that he did not remember ever to have had any conversation with the defendant about the oil business to amount to anything in particular. He had purchased oil from him or his agents; have had no conversation directly with him; have talked with Mr. Hathaway.

J. M. Cullers, witness for the State, testified "that he lived at Sherman, Texas; was acquainted with the defendant Hathaway and had known him for 10 or 15 years. He has been engaged in the oil business and was agent for the Waters-Pierce Oil Co. prior to November, 1894—that is, division agent; do not know the extent of his authority; did not purchase oil from Hathaway, but from the local agent in Sherman; would send orders to the local agent at Sherman and it would be filled from the depot there. Stratton is the local agent at Sherman. We got the profit allowed jobbers of two cents per gallon; that the oil was billed to them at the price they were selling to the general trade, and the invoice was furnished from Denison by Mr. Hathaway with the number of gallons bought. At the end of the month a statement of the account, less two cents a gallon on what had been bought, was sent up. Hathaway did not furnish us any price-list at which oil should be sold in case competing companies came into the market."

A. W. Clem, witness for the State, testified that he met Hathaway in the spring of 1894; that Hathaway did not know that he (Clem) was an agent of the Waters-Pierce Oil Company; that the defendant had charge of the northern division of the Waters-Pierce Oil Company, with headquarters at Denison.

This was in effect all the testimony offered by the State concerning the appellant, Hathaway.

We quote from the testimony of E. T. Hathaway, given in chief, as follows: "My name is E. T. Hathaway. I reside at Denison, Texas, and have resided there since 1878. I have resided in Texas since 1878, and my present position is agent for the Waters-Pierce Oil Company. I have been such agent since June of 1878. The Waters-Pierce Oil Company did business in Texas prior to 1878, but not under its corporate name. Waters-Pierce & Co. did business prior to that time. They were incorporated in 1878 and continued the business selling oil. I do not know John D. Rockefeller
83 nor Henry M. Flagler nor William Rockefeller nor John D.

Archbold nor Benjamin Brewster nor Henry H. Rogers nor Wesley H. Tilford. I never had any connection with any of these gentlemen, directly or indirectly. I never had a letter from them or either of them or instructions from either of them. I was employed by the Waters-Pierce Oil Company, and that company pays me. My present salary as agent and emplo-é is $2,700 per annum. I knew W. E. Hawkins. I never had any dealings with Hawkins in McLennan county or anywhere else of any character or nature. I never sold any oil in McLennan county. I own no stock in the Waters-Pierce Oil Company, nor do I own any stock in the Standard Oil trust, nor did I ever own any stock in either company. I know nothing about the Standard Oil trust. I am simply an agent on salary. I never knew of any combination between the Waters-Pierce Oil Company and the Standard Oil trust or the officers or either of them. I never did any act knowingly and within my knowledge in the furtherance of the Standard Oil trust or any conspiracy of that kind with trade, in restriction of trade. The oil that I sold came from St. Louis. It is brought in from St. Louis, State of Missouri, and sold in Texas in unbroken packages—that is, it is brought in tank cars as well as in barrels and cases and sold in those barrels and cases. It is kept in stock until it is sold. I know nothing whatever about the management of the Waters-Pierce Oil Company at St. Louis."

It will be seen that the State by its testimony failed to reach defendant with any evidence even tending to show that he was an original conspirator or that he entered into a conspiracy in restraint of trade, which, of course, would apprehend that he had full knowledge of the object and purpose of such conspiracy and its plans of operations, and when we come to consider his testimony his evidence shows that his only connection with the alleged trust was as agent and employé of the Waters-Pierce Oil Co. at a stipulated salary of $2,700.00 a year. A great deal of evidence is presented in this record showing the method of dealing on the part of the Waters-Pierce Oil Company at various points in the State of Texas, but it is remarkable that this testimony is for the most part at other points and in other divisions than that allotted to the defendant Hathaway, and there is not any proof furnished in the record that brings him in contact with any of the methods pur*u*sed by said trust, which is
84 obnoxious to the provisions of the statute in question. Certainly there is no testimony of any connection on his part or that he had anything to do with the oil trade in McLennan county. McLennan county was in another and distinct division and not under his management or control. Not only does the State fail to furnish any affirmative proof bringing him in contact with the transactions of Grice and Hawkins in McLennan county, but by his own testimony he negatives the proposition that he had anything whatever to do with the oil trade or with cutting rates on oil in McLennan county. Quoting from his testimony, he says: "I never had any dealings with Hawkins in McLennan county or anywhere else of any character or nature. I never sold any oil in McLennan county." Of cou-se, if there was any testimony in this

case showing that he was one of the original conspirators, or that he entered into a conspiracy after it had been formed, he might be affected by the acts of the agents of the said trust in McLennan county; but, as we have seen, there is no such testimony. If he had been indicted as an agent for some act done in McLennan county the proof would not have sustained the accusation, because there is no testimony that he acted as such agent or in conjunction with any agent of the trust in McLennan county; nor is there any evidence tending to show that he advised, aided, or encouraged any man in Texas or anywhere else to enter into this conspiracy or to act as agent therefor. If appellant had acted as an agent for the conspiracy, with full knowledge of its purposes, and proof had been made of this fact, he could not be convicted under the allegations of this indictment. To hold him responsible as an agent the indictment must allege the fact that he knew of the conspiracy and its purposes.

See Stalls *vs.* State, 37 Texas, 440.
Pressler *vs.* State, 13 Tex. App. Rep., 95.
Hunter *vs.* State, 18 Tex. App. Rep., 444.

II. As we have seen, there is no count in the indictment charging the appellant as principal, manager, director, agent, servant, or employé, or that he in any capacity acted for said trust and knowingly carried out any of the purposes, stipulations, prices, rates, or orders thereunder or in pursuance thereof; and if there had been ever so much proof on this subject the conviction could not have been sustained. However, the learned judge who tried this case seems to have
85 proceeded upon this idea, as is demonstrated from the following portion of his charge, which is quoted as follows:

"And if you further believe from the evidence that at said last-mentioned time—that is, within 3 years next preceding Nov. 21, 1894—either of the defendants William Grice or William E. Hawkins was then and there the agent of said Waters-Pierce Oil Co., and as such agent was at said time engaged in knowingly carrying out in McLennan county any and all of the provisions, terms, and purposes of said agreement and combination so entered into by the said Waters-Pierce Oil Company (if any) as aforesaid, and you further find that at said time this defendant E. T. Hathaway was also agent of the said Waters-Pierce Oil Company, and as such was at the same time engaged as such agent in knowingly carrying out and maintaining the purposes, provisions, and terms of said agreement by the Waters-Pierce Oil Co. on January 2, 1892, as hereinbefore mentioned (if any), anywhere within the State of Texas, then, if you so believe beyond a reasonable doubt, you will find the said E. T. Hathaway guilty as charged in the indictment, and assess his punishment as hereinbefore stated.

"And in this connection you are charged that it is wholly immaterial whether or not he, the said E. T. Hathaway, was at any time in McLennan county.

"You are further charged that the contract offered in evidence dated Jan. 2, 1882, also the supplemental agreement dated Jan. 4,

1882, and which is designated as the 'Standard Oil trust agreement,' includes not only the corporations, individuals, firms, partnerships, and associations of persons therein mentioned, but all persons acting for or in connection with said corporations, firms, partnerships, individuals, or associations of persons, whether they be acting in the capacity of officers, managers, directors, agents, servants, or employés or in any capacity whatever.

"And you are further charged that said contract so made and entered into as aforesaid is a combination, trust, and conspiracy in that it creates restrictions in trade, and if you believe from the evidence beyond a reasonable doubt that at any time within three years immediately prior to Nov. 21, 1894, said contract was in existence and in full force and effect as therein provided, and as such was then and there being executed and carried out in the State of Texas by or through the officers of said Waters-Pierce Oil Co.; and if you further find that the purposes and provisions of said
86 agreement was at said time being knowingly carried out and in force within the State of Texas by the managers, agents, servants, and employés of said Waters-Pierce Oil Co., including this defendant E. T. Hathaway; and you further find beyond a reasonable doubt that at said time during the period last mentioned the purposes and provisions of said agreement *was* knowingly being carried out and enforced in the county of McLennan by W. E. Hawkins or William Grice or any other servant or employé of said Waters-Pierce Oil Co., then, if you should so find, you should find the defendant E. T. Hathaway guilty as charged in the indictment, and assess his punishment therefor as hereinbefore has been directed."

If there had been a count in the indictment charging the appellant as a servant or agent of said trust in McLennan county, Texas, then the charge in question, if it had otherwise been a correct legal charge, would have been applicable under such indictment; but under the indictment in this case it was wholly inapplicable, because, as we have seen, if convicted at all, he could only be convicted as a principal conspirator. The record in this case is exceedingly meager of any acts of appellant done in his own district or division, and such as were there discharged were purely and simply as an agent of the Waters-Pierce Oil Co. Whether he would be indictable for said acts in one of the counties of his own district is not the question here. But the simple question is, Does the record show that he was a conspirator, so as to make him guilty of some act done by the trust in McLennan county, Texas, in restraint of trade? The record fails to furnish us with any evidence that would fasten him to the conspiracy, so as to make him amenable as a conspirator in McLennan county.

III. There are some constitutional questions raised in this case. Some of the questions have been before our supreme court, and it has been decided by that tribunal that the law in the question is constitutional. It is claimed by the appellant, however, that the decision is obiter, and, moreover, that the decision of the question by that tribunal is not binding upon us. While the presumption will be indulged that the decision of the supreme court is correct,

yet a discussion and decision of the question, in the view we have taken, is not necessary in determining this cayse. This question has been before the supreme court in the following cases:
87 Anheuser-Busch Brewing Ass'n *vs.* Houck, 27 S. W. Rep., 696; Houck & Deiter *vs.* Anheuser-Busch Brewing Ass'n, 88 Tex., 184; T. & P. Coal Co. *vs.* Lawson, 34 S. W. Rep., 919, and Walch *vs.* Windmill Co., recently decided.

Because the court charged on a phase of the case not supported by any allegation in the indictment, and because the evidence wholly fails to sustain this verdict, the judgment is reversed and the cause remanded.

HENDERSON, *J.*

Filed June 26th, 1896.

P. WALTON, *Clerk.*

The foregoing has the following endorsement, to wit:
No. 2062. Copy of opinion in Hathaway *vs.* The State of Texas. Filed Nov. 28, 1896. J. H. Finks, clerk, by C. A. Richardson, deputy.

88 *Writ of Habeas Corpus.*

United States Circuit Court, Fifth Circuit and Northern District of Texas, at Waco.

The President of the United States of America to J. W. Baker, sheriff of McLennan county, Texas, Greeting:

Whereas it has been represented unto our said circuit court by the petition of William Grice that he, the said William Grice, is now unlawfully restrained of his liberty by and is now held in the custody of J. W. Baker, sheriff of McLennan county, Texas, and upon consideration of said petition our said circuit court has made and allowed the following order, to wit:

"*Ex Parte* WILLIAM GRICE. No. 655.

Upon consideration of the application for *habeas corpus* made by William Grice, it is ordered that the writ issue as prayed for in the application, and that the same be made returnable forthwith before this court, at Waco, Texas":

These are therefore to command you, the said J. W. Baker, sheriff as aforesaid, that you produce forthwith the body of the relator, William Grice, before our said circuit court, at Waco, Texas, and that you then and there certify to said court the true cause of the detention by you of the said William Grice.

Herein fail not, but to the commands of this writ due obedience yeild, lest you suffer the pains and penalties of contempt for the disobedience thereof.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of the said circuit court, at Waco, Texas, this the 9th day of December, in the year of our Lord eighteen

hundred and ninety-six, and of American Independence the 121st year.

J. H. FINKS,
Clerk of said Court,
[SEAL.] By C. A. RICHARDSON, *Deputy.*

The foregoing has the following endorsement, to wit:

89 655, 2062. *Ex parte* William Grice. Original writ of *habeas* — to J. W. Baker. Issued Dec. 9, 1896. J. H. Finks, clerk, by C. A. Richardson, deputy. Came to hand Dec. 9th, 1896, and was executed same day by delivering a copy of this writ to J. W. Baker, sh'ff of McLennan county, in person. R. M. Love, U. S. M. Filed Dec. 18, 1896. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

90 *Return of Sheriff to Writ of Habeas Corpus.*

Filed Dec. 9, 1896; Dec. 18, 1896.

In the United States Circuit Court for the Northern District of Texas, at Waco.

No. 655. *Ex Parte* WILLIAM GRICE.

In obedience to the writ of *habeas corpus* issued in the above styled and numbered cause, and this day served upon me by the United States marshal for the northern district of Texas, at 3.30 p. m., I herewith produce in open court, as directed by said writ, the body of said William Grice, and do further certify that I hold the said William Grice in my custody by virtue of a capias issued out of the district court of 54th judicial district of the State of Texas upon an indictment preferred in said court against the said Grice and others in a certain criminal case numbered and entitled as follows, to wit: No. 871, The State of Texas *vs.* John D. Rockefeller *et al.*, said Grice being charged in said indictment, with others, with having engaged in a conspiracy against trade, in violation of an act of the legislature of the State of Texas entitled "An act to define trusts, and to provide the penalty and punishment of corporations, firms, and associations of persons connected with them, and to promote free competition in the State of Texas," approved March 30th, 1889.

Given under my hand, at Waco, Texas, December 9th, 1896.

J. W. BAKER,
Sheriff of McLennan County Texas,
By J. H. LOCKWOOD, *Deputy.*

The foregoing has the following endorsement, to wit:

No. 655, 2062. *Ex parte* Wm. Grice. Return of Jno. W. Baker, sheriff, &c., to writ of *habeas corpus.* Filed Dec. 9, 1896. J. H. Finks, clerk, by C. A. Richardson, deputy. Filed Dec. 18, 1896. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

91 *Copy of Orders in the Circuit Court of the United States at Waco, Texas.*

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Waco, Texas, November Term, 1896.

No. 655. *Ex Parte* WILLIAM GRICE.

DECEMBER 9TH, 1896.

Upon consideration of the application for *habeas corpus* made by William Grice, it is ordered that the writ issue as prayed for in the application, and that the same be made returnable forthwith before this court at Waco, Texas.

And thereafter the following proceedings were had, to wit:

No. 655. *Ex Parte* WILLIAM GRICE.

DECEMBER 9TH, 1896.

Ordered by the court that this cause be set down for hearing on December 12th, 1896, and that the defendant be admitted to bail in the sum of $1,000.00.

And thereafter the following further proceedings were had, to wit:

No. 655. *Ex Parte* WILLIAM GRICE.

DECEMBER 9TH, 1896.

On this day came into open court William Grice and his sureties, E. Rotan, H. Behrens, and P. H. Dean, who jointly and severally acknowledged themselves to owe and stand indebted unto the United States of America in the full sum of one thousand dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following:

Whereas the said William Grice complained to this court that he was unlawfully restrained from his liberty by Jno. W. Baker, sheriff of McLennan county, Texas, and was granted a writ of *habeas corpus*, which is set down for hearing on the 12th day of December, A. D. 1896:

Now, the condition of this obligation is such that if the said William Grice shall well and truly personally appear before this
92 court on the 12th day of December, A. D. 1896, at 10 o'clock a. m., and not depart from the court without leave thereof, and in all things abide the decision of this court on his said application, then this obligation to be void; otherwise to remain in full force and effect.

And thereafter the following further proceedings were had, to wit:

No. 655. *Ex Parte* WILLIAM GRICE.

DECEMBER 11TH, 1896.

Ordered by the court, on motion of respondent, that this cause be, and the same is hereby, transferred to the branch of this court held at Dallas for trial, and the same is set down for hearing on the first day of the next term of said court at Dallas, it being the 11th day of January, A. D. 1897, and the clerk is ordered to transmit to said court at Dallas all the original papers in this cause and a certified copy of all orders entered herein.

I, J. H. Finks, clerk of the circuit court of the United States for the northern district of Texas, do hereby certify that the above and foregoing is a full, true, and correct copy of all orders entered in said court at Waco, Texas, in cause numbered 655, *Ex parte* William Grice, as fully as the same appears from the records of said court in the clerk's office at Waco, Texas.

In testimony whereof I have hereunto affixed the seal of said court, at Waco, Texas, and sign the name of the clerk, on this the 16th day of December, 1896.

J. H. FINKS, *Clerk*,
[SEAL.] By C. A. RICHARDSON, *Deputy*.

The foregoing has the following endorsement, to wit:
Filed Dec. 18, 1896. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

93 *Amended Return of Jno. W. Baker, Sheriff, and Exhibits.*

In the United States Circuit Court for the Northern District of Texas, at Dallas.

No. 2062. *Ex Parte* WM. GRICE.

To the honorable judge of said court:

Now comes John W. Baker, respondent in the writ of *habeas corpus* issued in the above styled and numbered case, and, by leave of the court obtained, files this his amended return in lieu of his return filed December 9th, 1896, and says—

In obedience to the writ of *habeas corpus* issued in the above styled and numbered cause — day served upon me by the United States marshal for the northern district of Texas, at 3.30 p. m. Dec. 9th, 1896, I forthwith produced in open court, as directed by said writ, the body of said William Grice, and do further certify that I hold the said William Grice in my custody by virtue of a capias issued out of the district court of the 54th judicial district of the State of Texas upon an indictment preferred in said court against said William Grice and others in a certain criminal case numbered and entitled as follows, to wit: No. 871, The State of Texas *vs.* John D. Rockefeller *et al.*, said Grice being charged in said indictment, with others, with having engaged in a conspiracy against trade, in violation of an act of the legislature of the State of Texas entitled "An act to define

trusts, and to provide the penalties and punishment of corporations, firms, and associations of persons connected with them, and to promote free competition in the State of Texas," approved March 30th, 1889; and, responding further, I would respectfully show to the court that the authorities of the State of Texas have at all times been vigilant and diligent in the discharge of their respective duties toward this relator and his codefendants.

(1.) That said authorities have been anxious and ready to
94 accord all the defendants under the indictment heretofore mentioned that speedy trial which they were guaranteed under the constitution and laws of the State of Texas; that the delay in the determination of the indictment against them has come in a great part of their own seeking and by virtue of their own acts; that the call docket of the district court records of the 54th judicial district of the State of Texas, where said indictment is pending, shows that at the first term of said court, after said indictment was presented, said cause was set down for trial on March 14th; that upon the call of said docket for trial it was continued by agreement between the State and the defendants; that at the succeeding September term the case was set down for trial on October 4th, but, on the call of same for trial on that day, was continued, upon motion of the defendants; that it was again set down for the November term, to be tried on the 2nd day of December, 1895; that when the cause was called the defendants, including relator, claimed a severance, to which they were entitled under the laws of Texas, and forced the State to try Hathaway alone, and thereby avoiding and defeating a trial of relator herein.

For a verification of all of the foregoing statements I respectfully refer the court to the certified copy of the record of said 54th judicial district of the State of Texas, marked Exhibit "A," attached hereto and made a part hereof.

Answering further, respondent is informed and believes, and so charges, that the avowed purpose of the relator and his codefendants is to delay, and, if possible, to defeat, the jurisdiction of the courts of Texas in the administration of its laws, which he and his codefendants are charged with having violated; that, in pursuance of this purpose, this relator and his codefendants have plotted and concocted a set of facts and circumstances for the express object of appealing to that judicial discretion lodged in this court for granting writs of *habeas corpus;* that this relator and his codefendants have conspired among themselves to have their several sureties surrender them into my lawful custody as sheriff of McLennan county, Texas; that by their own acts and at their own request and by their own procurement the sureties of relator and his codefendants did surrender them, and on the very day of the sur-
95 render of this relator, contemporaneously with the surrender, in obedience to the petition of relator, a writ of *habeas corpus* issuing out of this honorable court was served upon me as sheriff of McLennan county, commanding me to produce before the court instanter the body of relator, held in my lawful custody.

For verification of which facts reference is made to the attached

affidavits of the sureties of relator and his codefendants, marked Exhibit "B" and attached hereto and made a part hereof, by agreement with counsel of relator, in lieu of the evidence of said sureties before this court.

Wherefore respondent prays that William Grice, relator herein, be remanded to my lawful custody, as sheriff of McLennan county, to await the action of the authorities of the State of Texas on the indictment pending against him for violation of its penal laws.

Given under my hand officially, at Waco, Texas, this 9th day of January, 1897.

J. W. BAKER,
Sheriff McLennan County, Texas.

96 EXHIBIT "A."

THE STATE OF TEXAS, }
County of McLennan. }

I, John H. Sears, clerk of the district court within and for said county and State of Texas, do hereby certify that in No. 871, The State of Texas *vs.* Jno. D. Rockefeller *et al.*, violation of anti-trust law, filed Nov. 21, 1894, the following is a true and correct copy of the original entries made upon State docket, district court, 54th judicial district, the same being used by the judge thereof for the docketing of criminal cases and the noting of settings, continuances, motions, and other orders. For the March term, 1895, the following is a true and correct copy of the original entry made by the district judge:

Set for May 14th; continued by consent.

For the Sept. term, 1895, the following is a true and correct copy of the original entry made by the district judge:

October 4th, continued by defendants and cause set for Dec. 2nd.

For the Nov. term, 1895, the following is a true and correct copy of the original entry made by the district judge:

Dec. 2nd, defendants sever *and* E. T. Hathaway upon trial first.

For the March term, 1896, the following is a true and — copy:

"Appealed as to Hathaway."

For the September term, 1896, the following is a true and correct copy:

"Passed."

For the November term, 1896, the following is a true and correct copy of the original entry:

December the 7th, this cause dismissed as to defendant E. T. Hathaway by county attorney.

In witness whereof I set my seal of office, at office, in Waco, this the 9th day of January, A. D. 1897.

JNO. H. SEARS,
Clerk D. C., McL. Co., Tex.,
By R. V. McCLANE, *D'y.*

97 EXHIBIT "B."

THE STATE OF TEXAS, }
County of McLennan, }

Before me, the undersigned authority, on this day personally appeared Charles Banister, who, being by me duly sworn, on oath says—

That on the — day of November, 1894, I became a surety for William Grice and F. A. Austin and Arthur M. Finley, defendants in cause # 871, styled The State of Texas *vs.* John D. Rockefeller *et al.*, pending in the 54th judicial district, McLennan county, Texas; that I continued as surety for their appearance from term to term until December 9th, 1896; that on that day D. C. Bolinger, Esq., one of the attorneys for the defendants, came to me and said that, as I was a surety for Messrs. Grice and Austin, he wanted me to surrender them to the sheriff on that day; that by his request I went to the office of Clark & Bolinger, when I met Messrs. Grice and Austin, and accompanies them to the office of the sheriff, where I surrendered them at about 2.30 p. m., December 9th, 1896, to John W. Baker, sheriff of McLennan county, Texas.

That in the forenoon of December 12th, 1896, W. E. Hawkins, one of the defendants in the above numbered and styled cause, came to me, at my place of business, and requested that I go to the office of Clark and Bolinger for the purpose of surrendering Arthur M. Finley, then in the office; that I accompanied Mr. Finley to the sheriff's office, where, at the request of Messrs. Clark & Bolinger, I surrendered Mr. Finley, and where, at the same time, Mr. N. S. Hill, a surety for W. E. Hawkins, surrendered said Hawkins, all in the morning of December 12th, 1896.

CHARLES BANISTER.

Subscribed and sworn to before me this 9th day of Jan'y, 1897, at my office, in Waco, Texas.

JAMES I. MOORE,
[SEAL.] *Notary Public of McLennan County, Tex.*

98 EXHIBIT "B."

STATE OF TEXAS, }
County of McLennan. }

Before me, the undersigned authority, this day personally appeared N. S. Hill, who, being by me duly sworn, on oath says—

That he was formerly a surety on the recognizance of W. E. Hawkins in cause No. 871, State of Texas *vs.* Rockefeller *et al.*, 54th judicial district; that I continued as surety for a period of two years, until about the 19th day of December, 1896; that on said day said Hawkins came in person to me and stated that his case was to be removed to the Federal court, and that he wanted me to surrender

him into the custody of the sheriff of McLennan county; that at his request I made the surrender on that day.

N. S. HILL.

Sworn to and subscribed before me, at Waco, Texas, Jan'y 9th, 1897.

CULLEN F. THOMAS,
[SEAL.] *Notary Public, McLennan County, Texas.*

The foregoing has the following endorsement, to wit:
U. S. circuit ct., northern dist. of Texas, at Dallas. *Ex parte* William Grice. Amended return of John W. Baker, sheriff of McLennan Co., Tex. No. 2062. Filed Jan'y 11, 1897. J. H. Finks, clerk, by Chas. H. Leduum, deputy.

99 *Replication.*

In the United States Circuit Court for the Northern District of Texas, at Dallas.

No. 2062. *Ex Parte* WM. GRICE.

Now comes William Grice, relator in the above entitled and numbered cause, and, answering the amended return of the respondent, John W. Baker, sheriff, this day filed herein, to wit, January 11th, 1897, demurs to so much of said return as sets up or attempts to set up that the delay in the determination of the indictment against this relator has come in a great part from this relator's own seeking and by virtue of relator's own acts, in that said criminal cause No. 871, in the district court of the 54th judicial district, was continued once by the consent of the parties, and subsequently, as pretended to be shown by the docket entries of said docket of said court, was continued thereafter by this relator, because said facts are wholly immaterial and irrelevant, there being no complaint on the part of this relator of any delay in the trial of said indictment in said district court of McLennan county prior to the conviction of this relator's codefendant, Hathaway, which occurred in December, 1895.

2. Relator further demurs to that portion of the return which avers that this relator, in conjunction with his codefendants in said cause, have conspired and concocted facts and circumstances for the express object of involving the judicial discretion of this court for granting a writ of *habeas corpus*, and he and his codefendants have conspired among themselves to have their several sureties surrender them into the hands and custody of the sheriff of McLennan county, Texas, because such facts, if true, do not constitute any justification of the detention of this relator and furnishes no answer to the allegations of the petition of this relator.

Wherefore and because of the fact that such amended return is required by law only to certify to this court the true cause of the

detention of this relator, such allegations — are herein de-
100 murred to are no answer to the issues before this court and are not sufficient in law; of all of which this relator prays the judgment of the court.

Further answering said return, this relator denies that he and his codefendant and counsel herein have conspired and confederated, as charged in said amended return of the respondent, for the purpose of defeating the jurisdiction of the courts of Texas and the administration of its laws. This relator says that for two years this relator and his codefendants have submitted to the jurisdiction of the courts of Texas for the purpose of trial as aforesaid, and when it became evident to this relator and his codefendants or co-relators herein that such trial was not to be had except at some indefinite period in the future, if ever, then this relator as a citizen of the United States proceeded to exercise his rights as such citizen and to call upon the courts of the United States to vindicate his rights, as he was entitled under the Constitution and laws of the United States and not for the purpose of defeating the jurisdiction of said courts of Texas, but for the purpose as indicated.

All of which this defendant is ready to verify.

JNO. D. JOHNSON,
CLARK & BOLINGER,
Attorneys for Relator.

UNITED STATES OF AMERICA, }
Northern District of Texas. }

I, Wm. Grice, relator, comes and says that the facts stated in the above and foregoing replication are true to the best of my knowledge, information, and belief.

WM. GRICE.

Sworn to and subscribed before me on this the 11th day of January, A. D. 1897.

J. H. FINKS, *Clerk*,
[SEAL.] By CHAS. H. LEDNUM, *Deputy.*

The foregoing has the following endorsement, to wit:
No. 2062. *Ex parte* Wm. Grice. Replication. Filed Jan. 11, 1897. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

101 *Agricultural Products and Their Value Produced in Texas in the Year* 1894.

Products.	No. of bales, bushels, &c.	Value.	Page of report.
Cotton	2,592,855 bales	$60,862,948 12	
Cotton seed	1,296,397 tons	8,102,481 25	186
Corn	63,184,450 bushels	29,111,640 84	188
Wheat	5,837,176 bushels	2,728,299 58	190
Oats	18,206,718 bushels	5,401,508 95	192
Barley	78,799 bushels	38,012 70	194
Rye	25,132 bushels	15,512 50	195
Rice	103,794 bushels	99,302 00	196
Sweet potatoes	4,983,796 bushels	2,316,598 72	197
Irish potatoes	557,794 bushels	389,797 60	199
Peas	385,140 bushels	399,746 00	201
Beans	28,780 bushels	40,944 95	203
Millet	89,195 tons	632,675 75	205
Sugar	94,456 barrels	1,099,402 00	208
Molasses	4,158 barrels	59,585 00	208
Sorghum syrup	38,425 barrels		
Sorghum forage	306,792 tons	1,934,537 37	212
Hay, cultivated	128,584 tons	1,100,321 50	214
Hay, prairie	189,280 tons	1,140,584 87	215
Peanuts	23,367 bushels	26,772 00	216
Tobacco	68,549 pounds	13,627 00	216
Pecans	42,608 bushels	62,844 00	216
Melons		483,522 75	218
Garden crop		2,194,887 00	220
Apples		148,285 00	222
Peaches		685,956 00	223
Pears		96,123 00	225
Plums		36,817 50	227
Grapes		196,978 20	229
Honey	2,273,515 pounds	210,007 66	230
Wool	11,557,258 pounds	810,566 66	236
		$120,410,286 47	

102 *Texas.*

Occupation.	Total.	Males.	Females.
Farmers, planters, and overseers	279,351	263,548	15,803
Agricultural laborers	129,553	111,469	18,084
Stock raisers, herders, and drovers	17,819	17,626	193
Laborers (not specified)	43,326	41,448	1,878
	470,049	434,091	35,958

103 DEPARTMENT OF THE INTERIOR,
CENSUS DIVISION,
WASHINGTON, *Nov.* 30, 1896.

Pursuant to section 882 of the Revised Statutes of the United States, I, George S. Donnell, chief of Census division, Department of the Interior, do hereby certify that the paper hereto attached is a true statement of the number of farmers, planters, overseers, agri-

cultural laborers, stock raisers, herders, and drovers and laborers (not specified) in the State of Texas, according to the census returns for 1890.

GEO. S. DONNELL,
Chief of Census Division.

104 W. P. C. F. A.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *November* 30, 1896.

Be it remembered that George S. Donnell, whose name is signed to the annexed certificate, was at the date of signing thereof chief of Census division, and that to his attestations as such full faith and credit are and ought to be given.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be [SEAL.] affixed the day and year first above written.

WM. H. MILLER,
Acting Secretary of the Interior.

105 In the United States Circuit Court for the Northern District of Texas, at Dallas.

In Re WILLIAM GRICE.

Petition for Writ of Habeas Corpus.

Before Charles Swayne, district judge of the northern district of Florida, sitting by special designation in northern district of Texas.

CHARLES SWAYNE, *District Judge:*

This petition filed by leave of the court on Dec. 9, 1896, at Waco, in the northern district of Texas, and subsequently transferred to Dallas for hearing, and filed before Dec. 18, 1896, states—

That the petitioner, Wm. Grice, is a resident of the city and county of Dallas, State of Texas; that he is a citizen of the United States, and is unlawfully restrained of his liberty by John W. Baker, sheriff of McLennan county, Texas, by virtue of a capias issued out of the district court of the fifty-fourth judicial district of the State of Texas, at Waco, upon an indictment preferred in the said court against him and other citizens of the United States on the 21st day of November, 1894, No. 871, and entitled "The State of Texas *vs.* John D. Rockefeller and others." Said indictment charging that John D. Rockefeller, Henry M. Flagler, John D. Archbold, Benjamin Brewster, Henry H. Rogers, Westley B. Tilford, Henry Clay Pierce, Arthur M. Finley, C. M. Adams, J. P. Gruett, E. Wells, Wm. Grice, F. A. Austin and E. T. Hathaway, did unlawfully agree, combine, conspire, confederate and engage with Wm. B. Hawkins and divers other persons to the grand jurors unknown in McLen-

nan county, Texas, in a conspiracy against trade, with the said Wm. E. Hawkins, and said other persons, creating a trust, by the combination of their capital, skill and acts with the said Wm. E. Hawkins and other persons for the purpose, design and effect to create and car-y out restrictions in trade.

That said indictment and prosecution has for its exclusive and only basis a certain act of the legislature of the State of Texas, entitled, "An act to define trusts, and to provide penalties and punishment of corporations, firms and associations of persons connected with them, and to promote free competition in the State of Texas," approved March 30, 1889, which act is a public law of the State of Texas.

That petitioner was arrested upon a capias issued under said indictment, and entered into recognizance for his appearance, and subsequently appeared on the 2d day of December, 1896, before the said court and said cause having been called for trial the defendants who had been arrested, announced a severance, and his codefendant, E. T. Hathaway, was then placed on trial, and by his counsel presented to said court his exceptions to the sufficiency of said indictment, and set up the following causes and exceptions to said indictment, to wit:

1. Because it did not appear from the face of the indictment that an offense against the law had been committed.

2. Because the indictment showed upon its face that the district court of the fifty-fourth judicial district had no jurisdiction.

3. Because the act hereinbefore recited was violative of the Constitution of the United States for the reason that said statute discriminated between different classes of citizens of the United States, and denied to certain citizens the equal protection of the law, and proposed to deprive certain citizens of the United States of their liberty, property, privileges, and immunities in a way other than by due course of the law of the land.

4. Because the act of March 30, 1889, was inoperative and void as to persons and citizens resident beyond the territorial limits of Texas.

5. Because said act did not prohibit a trust or declare it illegal, nor did it declare an offense or propose to punish it, but merely defined a trust without denouncing it, and was therefore not a penal law of the State of Texas, and no prosecution could be maintained under it.

6. Because said indictment showed upon its face that the parties presented were engaged in interstate commerce within the meaning of the Constitution and laws of the United States, and said court had no jurisdiction of any such matters.

Said district court overruled the above objections; the trial proceeded, and on the 12th day of December, 1895, resulted in a verdict of guilty of the said codefendant Hathaway, and assessed his punishment at a fine of $50, and judgment was duly entered thereon by the court.

That on the 14th day of December, 1895, said codefendant Hathaway filed his motions for new trial, and in arrest of judgment, set-

ting up among other things the error of the said court in overruling the exceptions above stated, which motion was overruled on Dec. 16, 1895, and said codefendant did thereupon prosecute his appeal to the court of criminal appeals of the said State of Texas, said last-named court having final jurisdiction of criminal matters in Texas, and being a court of last resort in said State, to hear and determine the questions therein raised; that under the provisions of the Code of Criminal Procedure of the State of Texas, and the act aforesaid, of 1889, said conviction was a felony, and the said Hathaway was subjected to confinement in the common jail of McLennan county, Texas, pending the determination of said appeal.

The petition further avers that the appeal of the said codefendant Hathaway was filed in the said court of criminal appeals at Dallas, on or about the 10th day of January, 1896, and on or about the 29th day of the same month, said appeal was argued by counsel, both for himself as appellant and counsel for the State, and was submitted to the said court for determination.

That upon the 24th day of June, 1896, said court of criminal appeals handed down its decision in said cause, wherein it declined or refused to pass upon the exceptions to the sufficiency of the indictment aforesaid, which had been duly raised in the court below, and duly presented to said court by assignment of errors, and by argument, and which involved the dearest rights, not only of the said codefendant, Hathaway, who was appellant therein, but of this petitioner, and which appeal called for an adjudication by said court of criminal appeals of the said State of Texas, upon said rights.

That the said court of criminal appeals decided said appeal upon a technical ground of the pleadings, holding in effect that because the indictment presented in said cause had failed to charge the appellant, Hathaway, with having "knowingly carried out as agent the stipulations, purposes, prices, rates or orders," under said alleged conspiracy, that thereafter, the admission of evidence to that effect over the objection of said Hathaway was unwarranted in law and said conviction was invalid, and thereupon for said cause, and without considering and determining the rights of said appellant, Hathaway, as a citizen of the United States under the Constitution, said court reversed said judgment and remanded said cause for trial *de novo* to said district court.

That since the rendition of said judgment by said court of criminal appeals, two terms of the said district court have been held, one of which is now nearing its close; that this petitioner with his codefendants have been arrested and placed under recognizance, have stood ready and anxious for trial upon said indictment, yet said cause has not been even called by the court for trial, nor has said cause been set for trial, but same has been permitted to remain on the docket of said court, subjecting this petitioner and his codefendants, not only to the shame and contumely of an indictment for felony, but denying him and his codefendants the right to be heard as a citizen of the United States, and whereby this petitioner, as well as his codefendants, are without remedy in the State courts

of Texas, for the assertion and vindication of their rights under the Constitution of the United States.

And petitioner further states that on the 24th day of November, 1896, said codefendant, E. T. Hathaway, procured from this court his writ of *habeas corpus*, commanding said John W. Baker, sheriff of McLennan county, to produce before it the body of said Hathaway, and certify to the cause of his detention, which writ was, on the same day, duly served on the said sheriff, who made return that he held said Hathaway by virtue of a capias issued under the indictment hereinbefore mentioned.

Said cause was set for hearing on the 7th day of December, 1896, at Waco, Tex., and due notice thereof given to the State; that said writ was based exclusively upon the ground that he was a citizen of the United States, and that the law under which said indictment had been presented was violative of the Constitution of the United States in the particulars stated in his exceptions thereto filed upon the trial of the said cause.

That petitioner further shows that the prosecuting officer of the State of Texas is in the district aforesaid, as petitioner believes, for the purpose of defeating the jurisdiction of the Federal court upon the said writ, and for the purpose of preventing this court from passing upon the constitutionality of the rights of the said E. T. Hathaway as a citizen of the United States, did, on the 7th day of December, 1896, in said district court, and with the consent of said court, dismiss said indictment and prosecution as to said E. T. Hathaway, codefendant, but left same to stand unimpaired and unaffected as to this defendant and his other codefendants, and upon the same day the said sheriff did file his amended return to said writ, wherein he submitted to this court a copy of said judgment of dismissal of the said district court of the State of Texas, and did further certify that by reason of said dismissal he claimed no further right and custody of the said Hathaway, and by reason thereof the jurisdiction of this court in the premises was practically and substantially terminated, and this court was denied the privilege of determining whether or not said act of the legislature of the State of Texas, approved March 30, 1889, commonly known as the "anti-trust act," was, or was not, violative of the Constitution of the United States, and violative of the rights, privileges and immunities of your petitioner, as well as his codefendants.

The petition further avers that said act is violative of the Constitution of the United States, and is therefore null and of no effect, for the reasons stated in said exceptions to said indictment hereinbefore recited; that said act discriminates between different classes of citizens of the United States, and denies to certain citizens the equal protection of the laws; that it deprives certain citizens and classes of citizens of the United States of their liberty, property, privileges and immunities in a way other than by due course of the law of the land; that it otherwise attempts to justify the exercise of extraterritorial jurisdiction over the citizens of the United States residing in other States of the American Union, and over acts done in other States of the American Union, and over which the State of Texas

can have no possible jurisdiction; and that said act and the indictment against your petitioner and others, as aforesaid, is an attempt to regulate and interfere with interstate commerce, all in violation of the Constitution of the United States.

The petitioner further shows that by rea- of the premises he is without remedy for the assertion and vindication of his rights as a citizen of the United States under the Constitution thereof; that he has stood under indictment for felony charged with the violation of said statute for a period of two years without being afforded an opportunity by the State courts of Texas for the assertion of his rights as aforesaid as a citizen of the United States. Your petitioner avers and believes that it is the purpose and intent of the prosecuting authorities of the State of Texas to prevent, if possible, any appeal by this petitioner to the courts of the United States for the vindication of his rights as aforesaid as a citizen. In view of the premises herein recited, and without the interposition of this honorable court for his due protection and the due conservation of his rights as a citizen of the United States, he is practically remediless by an appeal in regular course or otherwise.

Upon the said premises the petitioner prays this court for its writ of *habeas corpus*, to the end that the cause of the detention of the petitioner may be promptly and summarily inquired into by this court according to the laws of the United States, in order to direct the discharge of this petitioner from the custody of said Baker, sheriff, as aforesaid.

The petitioner filed with his petition his exhibits, as follows:

1. Copy of indictment preferred in said cause against your petitioner and others.

2. Copy of judgment of the district court of the fifty-fourth judicial district adjudging his codefendant, Hathaway, guilty.

3. A copy of the brief and argument of your petitioner's codefendant Hathaway in the court of criminal appeals of the State of Texas.

4. A copy of the opinion of the said court of criminal appeals of the State of Texas.

5. And petitioner refers to the record of this court in matter of the application of *ex parte* E. T. Hathaway, and prays that they may be considered a part and parcel of this petition. And your petitioner prays that these papers filed herewith may be read and considered by the court upon final hearing hereof, also as a part of this his petition for *habeas corpus*.

And as in duty bound your petitioner will ever pray.

Said petition was duly sworn to by the said petitioner, William Grice, upon the 9th day of December, 1896, in the presence of Thomas P. Stone, a notary public for McLennan county, Texas.

As to the papers filed with and made a part of this petition the indictment contains six counts, and covers every phase and feature of the said act under which it is drawn.

The judgment of the district court of the fifty-fourth judicial district of the State of Texas follows the verdict therein.

A copy of the brief and argument of petitioner Hathaway in the

court of criminal appeals of the State contains the usual matters embodied in such a brief, including the rulings of the trial judge, together with the opening argument of counsel for the State, made at the trial.

The copy of the opinion of the said court of criminal appeals of the state of Texas, showing that the court decided:

1. The judgment is reversed and the cause remanded because the court charged on a phase of the case not supported by any allegation in the indictment, and because the evidence wholly fails to sustain this verdict.

2. That the decision of the constitutional questions raised by appellant Hathaway was not necessary in that case.

3. That the presumption would be indulged that the decision of the supreme court of the State of Texas sustained the constitutionality of said act was correct.

4. The petition of E. T. Hathaway for *habeas corpus* and the return and amended return of the sheriff thereof shows substantially the facts as alleged above.

Upon said petitions and exhibits being filed, this court on Dec. 9, 1896, granted the writ of *habeas corpus* prayed for, which was duly served on the same day upon John W. Baker, sheriff of McLennan county, Texas, who upon the same day produced in open court as directed the said Wm. Grice, and answered that he held him in custody by virtue of a capias issued out of the district court of the fifty-fourth judicial district of the State of Texas upon an indictment No. 871, entitled "The State of Texas *vs.* John D. Rockefeller *et al.*" Said indictment charged said parties with having engaged in a conspiracy against trade in violation of the act of the legislature of the State of Texas, entitled "An act to define trusts," etc. On the 11th day of January, 1897, said sheriff of McLennan county filed his amended return herein, in which he set up in addition to the facts contained in his former return, that the authorities of the State of Texas have at all times been vigilant and diligent in the discharge of their duties toward this relator and his codefendants, that they have been anxious and ready to accord them a speedy trial, and that the delay in the trial came in a great part from their own seeking, and that the docket entries of said court would show that the cause was continued twice at their special request before proceeding with the trial in December, 1895; and the amended answer further charges that it was the avowed purpose of the relator and his codefendants to delay and defeat the jurisdiction of the State courts in their case by having their sureties surrender them in
106 order that this writ of *habeas corpus* might be sued out. And said sheriff prays that the relator herein be remanded to his custody, to which amended answer, relator on the same day replied that the delay complained of in his trial was that which occurred subsequent to the 2d day of December, 1895, and denied the allegations that he and his codefendants had conspired to defeat the jurisdiction of the court of the State of Texas, and demurred to so much of said amended answer as referred to relator and his codefendants having procured their sureties to surrender them to the

sheriff, because such allegations, if true, are no justification of the detention of this relator, and furnish no answer to the allegations of his petition, and prays judgment therein.

At the hearing petitioner also filed in evidence the certificate of the Secretary of the Interior, by George S. Donald, chief of Census division of the United States, showing the number of farmers, planters, overseers and agricultural laborers, stock-raisers, herders and drovers, and other laborers not specified, within the State of Texas, according to the census returns of 1890.

Upon the said petition and exhibits, answer and amended answer, and replication thereto, hearing was had.

First, as to the petitioner's demurrer to plaintiff's plea that he was in the hands of the sheriff by collusion with his sureties at the time of the suing out of the writ of *habeas corpus*, the court thinks the demurrer should be sustained. While it was early decided in Republica *vs.* Arnold, 3 Yates, 263, Penn. Reports, that the law authorizing the issuance of a writ of *habeas corpus* did not apply to a person out on bail, and could not be directed to the bail of an offender, and in Wales *vs.* Whitney, 114 U. S., 564, that in order to make a case for *habeas corpus* there must be actual confinement or the present means of enforcing it; mere moral restraint not being sufficient; also in the case in 6 Martin, La., 569, and Rex *vs.* Kessel, First Burrow, 658, by Lord Mansfield, to the same effect; yet it has been held in Taylor *vs.* Taintor, 16 Wallace, 366, that when bail is given the principal is regarded as delivered to the custody of his sureties, and their dominion is a continuance of the original imprisonment; wherever they choose to do so, they may seize him and deliver him up in their discharge, and if that cannot be done at once, they may imprison him until it can be done; the seizure is not made by virtue of new process, none is needed; the bail have their principal on a string and may pull the string whenever they please to surrender him in their discharge.

In the case of Devine *vs.* The State (5 Sneed, 625), the court, speaking of the principal, says: "The sureties had the control of his person; they were bound to keep him within their jurisdiction, and have his person ready to surrender when demanded. Though beyond the jurisdiction of Connecticut, he was still in the hands of the law of that State, and held to answer there for the offense with which he was charged." But the petitioner here was in the custody of the officer; he so answers in his return, and his answer must be taken as true. The petitioner had the perfect right, when first arrested, to refuse to give bail; his sureties had an equal right to surrender him to the State after it was given, for any cause whatever, and it is not within the province of the respondent to question the purpose in either case. The court is of the opinion that he had the right to do either one or the other, for the purpose of testing the constitutionality of the law under a writ of *habeas corpus*, when all the facts of this case are considered.

The principal questions remain: First, the right of this court to take jurisdiction of this case; second, the constitutionality of the law. The court is not inclined to question the contention of the

principles laid down by the State as embodied in the decision cited by its representatives on the first point, to wit: That the general rule is that parties being prosecuted in State courts will not be released on writs of *habeas corpus*, but will be left to reach the Supreme Court of the United States by writ of error. This rule is abundantly sustained by numerous decisions cited, and is scarcely questioned by the relator himself. But it is equally as well established by the same references, that the Federal court has the power to do so, if special circumstances should require; that it possesses a discretion in the matter which must be governed by the facts in such case.

A brief review of a few of the cases cited will establish the above principle. In the leading case of *Ex parte* Royal (117 U. S., 241), Justice Harlan, speaking for the court, while refusing to reverse the exercise of the discretion of the circuit court, affirms the power of the Federal courts to issue writs of *habeas corpus* of prisoners held by the States, and on page 248 in that case, says: "The statute evidently contemplated that cases might arise when the power thus conferred should be exercised during the progress of the proceedings instituted against the petitioner in a State court, or by or under the authority of a State on account of the very matter presented for determination by the writ of *habeas corpus*." And on pages 249 and 250: "We are therefore of the opinion that the circuit court has jurisdiction upon writs of *habeas corpus* to inquire into the cause of the appellant's commitment, and to discharge him if he be held in violation of the Constitution," but adds: "As it does not appear that the circuit court might not in its discretion and consistently with the law and justice, have denied the applications for the writ at the time they were made, we are of the opinion that the judgment in each case must be affirmed, but without prejudice to the right of the petitioner to renew his application to the court at some future time, should the circumstances render it proper to do so."

In re Wood (140 U. S., 278) the court refuses to review the exercise of the discretion of the circuit court in refusing to grant a writ of *habeas corpus*, but affirms the doctrine of the authority to grant such writ.

In Cook *vs.* Hart (146 U. S., 183) the above doctrine is affirmed in the following language:

"We are unable to see in this case any such special circumstances as were suggested in the case of *Ex parte* Royal, as rendering it proper for a Federal court to interpose before the trial of the case in the State court. While the power to issue writs of *habeas corpus* to State courts, which are proceeding- in disregard of rights secured by the Constitution and laws of the United States, may exist, the practice of exercising such a power before the question has been raised or determined in the State courts, is one which ought not to be encouraged. Should such rights be denied his remedy in the Federal court will remain unimpaired."

Mr. Justice Jackson, speaking for the court *In re* Frederick (149 U. S. 73), says: "While the writ of *habeas corpus* is one of the rem-

edies for the enforcement of the right of personal freedom, it will not issue as a matter of course, and it should be cautiously used by the Federal courts in reference to state prisoners. Being a civil process, it cannot be converted into a remedy for the correction of mere errors of judgment or of procedure in the court having cognizance of the criminal offense."

He affirms, however, the power of the Federal court to grant such writ in certain cases in advance of the trial, but says that that discretion should be subordinate to any special circumstances requiring immediate action. And when the State courts shall have finally acted upon the case the circuit court has still a discretion whether, under all the circumstances existing, the accused, if convicted, shall be put to his writ of error from the highest court of the State or whether it will proceed by writ of *habeas corpus* summarily to determine whether the petitioner is restrained of his liberty in violation of the Constitution of the United States.

In New York *vs.* Eno (155 U. S. 90), it is decided that the United States should refuse to issue writ of *habeas corpus* unless it also appears that the case is one of urgency, when the claim of the accused of immunity from prosecution in the State court has been passed upon by the highest court of the State of New York in which it could be determined, he may then, if the final judgment of that court be adverse to him, invoke the jurisdiction of this court for his protection in respect to any Federal rights asserted by him, but this may be denied by such judgment.

In re Belt (159 U. S. 100), Chief Justice Fuller, speaking for the court, says: "Ordinarily the writ will not lie where there is a remedy by writ of error or appeal, but in rare and exceptional cases it may be issued, although such remedy exists."

In re Swann (150 U. S. 648), the same judge in delivering the opinion for the court, says: "We reiterate what has so often been said before, that the writ of *habeas corpus* cannot be used to perform the office of writ of error or appeal, but when no writ of error or appeal will lie, if a petitioner is imprisoned or under a judgment of the circuit court which had no jurisdiction of the person or of the subject-matter, or authority to render the judgment complained of, then relief may be accorded," citing *In re* Fredrich (149 U. S. 70) and *In re* Tyler (149 U. S. 164).

The above cases not only establish the general rule insisted upon by the State, but also the exceptions thereto, and refute the argument made by the State that the only exceptions to that rule were stated in Whitten *vs.* Tomlinson, 160 U. S. 243.

It is insisted by the State that this is a case where the relator stands indicted in the ordinary way in the State court, and before trial in which his rights have not been determined, and that therefore, under the general rule referred to above in regard to the jurisdiction of the Federal court and the exercise of its jurisdiction, it will not take jurisdiction of the case.

What are the facts that this court is called upon to consider on this question of jurisdiction?

1. That the petitioner is indicted under this "anti-trust" law in

the same indictment with more than a dozen others, some of whom are charged with the commission of crimes in other States than that of Texas; that one of the petitioner's codefendants has been tried and convicted in the district court of the fifty-fourth judicial district of Texas, and appealed his case to the court of last resort in said State, raising the question of the constitutionality of the law and the jurisdiction of the State; that said court of last resort granted a new trial and remanded the codefendant for the reason that there had been no testimony offered to sustain a verdict of guilty, and while deciding it was unnecessary to pass upon the constitutional questions raised, referred favorably to decisions of the supreme court of the State, in which the anti-trust law had been mentioned in this regard. Said codefendant was held by the said district court for nearly six months before the State discovered that they had no evidence upon which to hold him longer, and said discovery was only made after the writ of *habeas corpus* had issued from this court, and the codefendant had been brought in for the purpose of having the question of the constitutionality of said law determined.

That since the trial of codefendant, Hathaway, in December, 1895, this petitioner has never been called for trial, nor given any chance to have his rights determined by said court; that the law in question makes an offense under it a felony, and prevents the petitioner from giving bond after conviction, and compels him to submit to incarceration during all the time required for an appeal to the criminal court of appeals, and from there to the Supreme Court of the United States should it become necessary. These facts, taken together with the rulings of the trial judge in the Hathaway case, as well as the argument of the counsel to the jury permitted therein for the State, constitute circumstances under which this court is called upon to exercise its discretion in assuming jurisdiction in a writ of *habeas corpus*.

While the facts that might be produced in the State court on the trial of petitioner might be entirely different from those that the State was able to offer at the trial of Hathaway, judging from the record of the evidence and the ruling of the court, and the wild harangue permitted by the State's representative to the jury in the name of argument, and the verdict that followed, this petitioner can expect little better results than Hathaway received in that court, yet the questions of law involved in the indictment and the rights of all his codefendants named therein, under the Constitution of the United States, must necessarily be the same. And while it is to be presumed by this court that in the first instance the State court will decide the questions properly and according to law, yet when this court has the evidence before it of the manner in which they have been decided in the Hathaway case, it is to be presumed that the same ruling would be given on the trial of this petitioner, especially when the ruling of the court of criminal appeals, in remanding the prisoner, referring favorably to the decision of the supreme court of the State affirming the constitutionality of the law, would seem to endorse that portion of the trial judge's ruling in this regard.

Petitioner makes no complaint of the delay occasioned by the State court of his trial prior to December, 1895, but alleges in his petition that he has had no opportunity since that time to have his case disposed of, which fact is not denied by the State. While the court of criminal appeals expressed it as unnecessary to pass upon the question of the constitutionality raised in the Hathaway appeal, yet in remanding Hathaway for a new trial under the circumstances, it practically and emphatically indorsed the constitutionality of said law, and that it might not be misunderstood, as to its views on the subject, referred with favor to the decisions of the supreme court of Texas, indorsing the law.

By the decision of the court of criminal appeals, they not only decided that there was no testimony to sustain the verdict against Hathaway, but intimate that the allegations of the indictment were not such as to admit the testimony, if it had been present. Under this suggestion, is it not strange that the State did not discover for six months that they possessed no testimony with which to convict him, and that discovery was not made until after the Federal court had granted its writ of *habeas corpus* and had the matter of the constitutionality of the anti-trust law set down for hearing? So far as the legal and constitutional questions are concerned, the trial of Hathaway, was the trial of this petitioner, and whatever rights he has under the Constitution of the United States under this indictment, have already been disposed of against him by the State in a court of last resort. But further than this it has been disposed of in the manner which not only prevents Hathaway from coming to this court to get his constitutional rights determined, but if the State's theory is correct it will prevent this petitioner and every other of his codefendants so held under bond, from getting any relief until they have submitted themselves to a trial and appeal to the court of criminal appeals with the certainty of having the constitutional questions determined against them, in the way that they have already been, and if there should appear evidence on which to hold them, then each of them must go to the Supreme Court of the United States pending a writ of error, and remain incarcerated in a jail of Texas during all this time whilst their rights are being thus determined.

The court has no better language in which to express its views of the State's contention herein than that given by Brewer, judge, in *Ex parte* Kieffer (40 Fed. Rep., 400) as follows:

"Therefore, it is often the proper way to decline to allow the writ, leaving the party to enforce his rights in the State courts. So it is argued that if it be true that these ordinances are in conflict with the Federal Constitution, the petitioner has his remedy. He can appeal his case from the police to the district courts; from there to the supreme court of the State, and thence to the Supreme Court of the United States. While that is true, yet he has no adequate relief in that way. He is now under sentence and he cannot appeal without bond. He will be subjected to trial in the district
107 court, possibly to an inquiry in the supreme court of the State and finally in the Supreme Court of the United States.

He must bear the expense and suffer the delay. This is not a case prior to trial and judgment. It is a case after trial and after judgment. He has experimented with the State court and it has decided against him. While he has, of course, the right to appeal, yet this is a burden, and personally to him, it is an adequate protection to say: 'You can appeal and go through that channel to the Supreme Court of the United States.'

"But this is not the only consideration. If these ordinances are invalid, they are invalid because of an attempt to interfere with commerce, and prevent the free exchange of commodities between citizens of another State and those of this city. Few persons can stand the expense of litigation running through that channel to the Supreme Court. Length of time would pass before the judgment of that court could be obtained. In the meantime, if these ordinances are enforced—not only against this petitioner, but against whoever may see fit to engage in this business—there is an interference with exchange of commodities between the citizens of other States and those of this city; and the result would be to stop such traffic. Now, when that would be the natural result, when that is declared to be the intended purpose of this legislation, this court may, in the exercise of its discretion, properly hold, after a case has passed to judgment in the State court, that the party has a right to a speedy inquiry and determination in the Federal court as to whether such ordinances are in conflict with the Constitution of the United States. The public, as well as the individual, are interested in a speedy settlement of this matter."

The act in question of March 30, 1889, of the State of Texas, is as follows:

1. "A trust is a combination of capital, skill, or acts by two or more persons, firms, corporations or associations of persons, or of either two or more of them, for either, any, or all of the following purposes: First, to create or carry out restrictions in trade; second, to limit or reduce the production or increase the price of merchandise or commodities; third, to prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities; fourth, to fix at any standard or figure whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce, or commerce intended for sale, use or consumption in this State; fifth, to make or enter into or carry out or execute any contract, obligation or agreement of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity or article of trade, use, merchandise, commerce or consumption below common, standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between themselves or preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or by which they shall agree to pool, combine or unite any interest that

they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

2. Any violation of either or all of the provisions of this act shall be, and is hereby declared a conspiracy against trade, and any person who may be or may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant or employé, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders thereunder, or in pursuance thereof, shall be punished by fine, not less than $50 nor more than $5,000, and by imprisonment in the penitentiary not less than one nor more than ten years, or by either such fine or imprisonment. Each day during a violation of this provision, shall constitute a separate offense.

3. In any indictment for an offense named in this act, it is sufficient to state the purposes or effects of the trust or combination, and that the accused was a member of, acted with, or in pursuance of it, without giving its name or description, or how, when or where it was created.

4. In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it or acted for, or in connection with it, without proving all the members belonged to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. The character of the trust or combination alleged, may be established by proof of its general reputation as such.

5. Persons out of the State may commit and be liable to indictment and conviction for committing any of the offences enumerated in this act, which do not in their commission necessarily require a personal presence in this State, the object being to reach and punish all persons offending against its provisions, whether within or without the State.

6. Each and every firm, person, corporation, or association of persons, who shall, in any manner, violate any of the provisions of this act, shall, for each and every day that such violation be committed or continued, forfeit and pay the sum of $50, which may be recovered in the name of the State of Texas, in any county where the offense is committed, or where either of the offenders reside, or in Travis county. And it shall be the duty of the attorney general or the district attorney, to prosecute for and recover the same.

7. The provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State.

8. The provision- of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser."

That portion of the fourteenth amendment of the Constitution of the United States referred to in the argument, is the latter part of section first, and is as follows:

"No State shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law."

While the objection of the petitioner to the act in question that it is invalid and inoperative as a penal enactment by reason of its failure to prohibit trusts and declare them illegal, and because of the further failure of said act to declare or propose any punishment, may be well taken in that strict construction required for criminal statutes, yet this objection, if good, can readily be remedied by the legislature, and the supreme court of the State have in some of their decisions read into it the intention of the legislature to complete its meaning. It were perhaps better to pass this objection, without further comment, in view of the fact that it is not the vital constitutional question before the court.

The fifth paragraph of the said act, in which it is attempted to claim jurisdiction for offenses committed outside the State of Texas, is so absurd that a denial thereof is scarcely necessary.

It has been decided in emphatic language by Chief Justice Taney in United States *vs.* Booth, 21 Howard, 524, as follows: "No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence." This principle is elementary, and not only common law, but the commonest of common sense.

It has been properly suggested that should this feature of this act be carried out and administered it would be unnecessary for any other State or nation at large to have any other laws upon the subject, as all persons within the limits of the United States could be regulated in their dealings and in the conduct of their business according to the wishes of the legislature of Texas. The State in its criminal jurisdiction as to acts committed within its own boundaries, and within the limits prescribed by the Federal Constitution, is sovereign, and its process should not be interfered with where it does not contravene the said Constitution, but beyond the boundaries of the State it has no more authority in New York, Missouri or Ohio than it has in Great Britain or Austria, and that part of the act which proposes this extraterritorial jurisdiction is absolutely null and void.

But under some of the decisions we think it may properly be contended that paragraph 5 of this act can be omitted as unconstitutional without affecting the remainder.

The vital question and the most important one in this case remains: Whether or not the said act violates that portion of the fourteenth amendment to the Constitution of the United States above referred to, in that it deprives its citizens of liberty and property without due process of law; and second, it denies to a considerable number of its citizens the equal protection of the law.

This is not a question of the right of taxation, nor is it a question of police power of the State to suppress or regulate nuisances

or to control the liquor traffic, foreign or domestic. But the two plain questions squarely raised are, first, can the State of Texas prohibit all contracts of whatever character or nature among its citizens when they tend to contravene the intended prohibition of the act, and second, if they can do so, is it class legislation to exempt 80 per cent. of the whole population from the pains and penalties of the said act when dealing with the agricultural products or live stock in the hand of the producer or raiser? These are the two vital questions involved in this case.

In regard to the first proposition, the complainant contends that the act is violative of the fourteenth amendment to the Constitution of the United States, because it denies to citizens of the United States the right to make valid contracts with respect to their business and property, and deprives them of the right of their property in that respect, as well as liberty, without due process of law.

Some difficulty has been expressed by courts in finding the exact and specific definition of the expressions "due process of law" and the "law of the land." The Constitution itself declares: "The Constitution and laws of the United States which shall be passed in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." The Supreme Court in speaking of "due process of law" and "equality of citizens," said that the purpose of the requirement is to exclude everything that is arbitrary affecting the rights of citizens. (129 U. S., 124.)

Says the court in Live Stock Association *vs.* Crescent City, etc., 1 Abb., United States Report-, 399: "No proposition is more firmly settled than that it is one of the fundamental rights and privileges of every American citizen to adopt and follow such lawful and industrial pursuits, not injurious to the community, as he may see fit, without unreasonable regulation or molestation. There is no more sacred right to the citizenship than the right to pursue any lawful employment in a lawful manner; it is nothing more nor less than the sacred right of labor." The same sentiment is affirmed in the Slaughter-house case, 16 Wallace, 36, and other decisions.

It is not necessary to argue that the constitutional privileges which protect the citizen in his life, liberty, & property, entitle him to raise, produce, — manufacture articles of general use, buy and sell, to fix and limit the amount of any article which he will produce or manufacture, to increase or reduce the amount so produced or manufactured at his own will, within the limits of his ability; to fix and limit the price at which he will buy and sell, to bargain and agree with others upon prices, so far as it may be necessary in the business of buying and selling; in fact, to do anything and enter into all contracts usual and necessary in the ordinary avocations of production, manufacture and trade.

Neither the State nor the national legislature possess any right to limit these natural privileges of contracting or conducting business. Any law which undertakes to abolish these rights, the exer-

cise of which does not involve infringements upon the rights of others, or to limit the exercise thereof beyond what is necessary, to provide for the public welfare and general security, cannot be included in the police power of the Government.

"The right of liberty embraces the right of man to exercise his faculties and follow any lawful avocation for the support of life." (Berthoff *vs.* O'Reilly, 74 N. Y., 515.)

Liberty in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. (People *vs.* Marx, 99 N. Y., 377; People *vs.* Gillson, 109 N. Y., 389.)

"The legislature cannot, under the pretense of exercising the police power, or under any other claim or pretense, enact laws prohibiting harmless acts not concerning the health, safety or welfare of society, and the courts may examine into, and annul such illegal legislation." (J. W. & W. Co. *vs.* Jacksonville, 67 Illinois, 37; Ieck *vs.* Anderson, 57 Cal., 251.)

"Whenever the prosecution of a particular calling threatens damage to the public or to other individuals it is a legislative subject for police regulation to the extent or preventing the evil, but it is strictly a judicial question whether the trade or calling is of such a nature as to require or justify police regulation." (Lakeview *vs.* Rosehill Cemetery, 70 Ills., 192.)

"It is also a judicial question whether police regulation extends beyond the threatened evil, and prohibits that which involves no threatened danger to the public."

One of the most sacred rights of liberty is the right of contract. All of the rights of contract which are necessary for the carrying on of ordinary business affairs are protected by the Constitution and are not capable of being restrained by legislative action. Among these rights is that of forming business relations between man and man. A man may form business relations with whom he pleases, and in the conduct of such business they may fix and limit the character and amount of their business, the price they will charge for the produce which they offer to the public, or about which they contract. It is part of the natural and civil liberty to form business relations free from the dictation of the State; that a like freedom should be secured and enjoyed in determining the conditions and terms of the contract, which constitutes the basis of business relations or transactions. It is, therefore, the general rule that a man is free to ask for his wares or his services whatever price he is able to get and others are willing to pay." (Tiedman's Limitations of Police Power, pp. 333)

108 And on page 244 he says: "A man has a constitutional right to buy anything in any quantityty, provided he uses only fair means and set his own price on it, or refuse to sell it at all. And what one man may lawfully do as an individual, two or more may also do when combined as partners. Combination for business purposes is legal. Combinations are beneficial as well as

injurious, according to the motives and aims with which they are formed. It is, therefore, impossible to prohibit all combinations. The prohibition must rest upon the objectionable character of the object of the combination."

"If there is one thing more than another public policy requires, it is that men of full age and competent understanding, shall have the utmost liberty of contracting, and their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider—that you are not lightly to interfere with this freedom of contract." (Print Co. *vs.* Sampson, 10 Eq. Cases, 452; Match Co. *vs.* Roeber, 106 N. Y., 473; U. S. Chemical Co. *vs.* Provident Chemical Co., 64 Fed. Rep., 946)

From the title of the act "conspiracies against trade," and "trusts" as well as from the argument for the State, it would seem to be the impression that the act was intended only to prevent oppressive and unreasonable combinations. There is no such limit, however, within its four corners. It embraces the combination of two or more persons, consequently the partnership of two persons. Neither is there any limitation to the amount of capital combined with skill and acts. A small capital with a minimum of skill is as much prohibited as the largest amount. We are not permitted to read any such explanation into it, but must take it as the legislature furnished it, and with such construction as the rules of law put upon it. The courts have no more power to exclude what it embraced in it than to include what is not contained in the plain language of the act. Then it is declared that the prohibited combinations must be for one or more certain specified purposes as follows:

To create or carry out restrictions in trade; to limit or reduce the production of commodities; to increase the price of commodities; to reduce the price of commodities: to prevent competition in the manufacture, sale, etc.; to fix the price of any article at a standard or figure, whereby its price to the public shall be in any manner controlled or established.

It makes criminal the making or carrying out of any contract, obligation or agreement, by which two or more persons, firms or corporations combine themselves not to sell any article below a standard or common figure; to keep the price of such article at a fixed or graduated price; to settle the price of any article between themselves and others to exclude all free unrestricted competition among themselves and others; to pool, combine or unite any interest they may have in connection with the sale and transportation of any article when its price might in any manner be affected.

An agreement between two or more persons forms a combination between them. An agreement between two or more persons is made as criminal as an agreement between 100. No attempt is made to condemn only acts which are oppressive by reason of their magnitude; it is evident that it is made criminal for two persons to combine as partners, corporators or otherwise in the ordinary business of life, to increase or reduce the price of commodities or fix the standard thereof. Next it is also made criminal for two persons to

agree to limit or reduce the production of commodities; it is made criminal for two persons to combine for the purpose of limiting competition, or to make any agreement in relation to the price of an article, so as to preclude free and unrestricted competition between them or themselves and others; it is made criminal for two persons to create or carry out restrictions in trade.

We will assume that A and B agree to combine their capital, skill and acts, or, in other words, enter into partnership for the purpose of manufacturing and dealing in certain commodities. They must first necessarily determine the extent of their production and the price at which they can sell their commodities. Having determined as near as possible the costs of their manufactured products and the minimum profit necessary to justify the carrying on of the business, they agree that they will not sell their commodities below this common-standard figure. They fix a figure on which they commence their sales, agreeing to graduate the price up or down as the cost of production may vary, finding after a time their prices too high and that competitors are underselling their commodities, they lower their prices, and this they may do solely for the purpose of holding the market against competitors. There may be after a time an increase in wages and they agree to increase their prices. There comes an era of hard times, their stock accumulates and is unsalable and they agree to limit or reduce the production of their commodities. All this they must be able to do or they cannot carry on their business as partners, yet every one of these agreements, arrangements, undertakings or acts are made criminal by this act. It is absolutely impossible to carry on a partnership business without violating it.

If persons combined cannot carry on business without entering into, executing and carrying out contracts, obligations and agreements by which they shall settle the prices of any article as between themselves and others and bind themselves to sell their commodities at a figure or graduated figure, and not to sell below a common-standard figure, or if they cannot carry on business without raising and lowering prices and increasing and diminishing their productions at pleasure, then certainly all these things are purposes of their combination. Whether these are the main purposes or purposes essential to the main purpose is not of the slightest consequence.

The right to combine, to form partnerships and joint stock associations, the right to agree as to prices and production, the right to fix prices, to raise and lower them as business may require, is not oppressive to the public nor unjust to the individual, nor contrary to public policy. It is an essential right as part of the liberty of the citizen, of which no legislature can deprive him.

If an ordinary business partnership is rendered criminal by the act, no further argument is necessary. That it is so most clearly appears from the concluding portion of section 1, by which two or more persons are forbidden to unite any interests that they may have in connection with the sale or transportation of any article or commodity that its price might in any manner be affected. Two

village grocers doing business at a loss to both could not form a partnership in order to save both from bankruptcy. Neither could they form a partnership in order that they might lessen their expenses and thus reduce the price of their commodities to the public. Still more. If A and B, each owning half a car-load of potatoes, should agree to ship together in order to obtain car-load rates, thus enabling them to sell lower in the markets, they would violate this act.

Not only under this act is it impossible for citizens to enter into the simplest partnership without violating it, bu- they cannot enter into a joint stock association or corporation, for that precludes competition between those combined. And this forms so necessary a part of the daily business of men that their prohibition would interfere with and prevent business as now conducted, and consequently to make that criminal is to interfere with the liberties of the citizen.

The statute books contain laws authorizing and legalizing associations and corporations. Can it be that the same statute book which contains such laws can contain also a valid law inflicting severe penalties on those who do only that which the laws have authorized?

The act also prohibits combinations which create or carry out restrictions in trade. It has never been held that all restrictions in trade were illegal or contrary to public policy. The rule is well settled that when a contract is publicly oppressive and the restrictions broader than necessary for the legitimate protection of the other party to be benefited by the contract, then the contract is void; otherwise, it is legal.

The fault of the act in regard to restraint of trade is the same in regard to competition; it makes no distinction between legal and illegal combinations and agreements which prevent competition. These, which have always been held legal, and which have always been an essential part of the liberty of the citizen, are made criminal equally with those which the law has always condemned.

A few *citizens* showing the law as established by the Federal courts as compared with the Texas act, may be instructive in this connection:

The case of The United States *vs.* The Trans-Missouri Freight Association, will bear careful perusal in this connection. The opinion of Riner, D. J., is reported in 53 Fed. Rep., 441, and of Sanborn, C. J., in 58 Fed. Rep., 53. The argument in these opinions is to demonstrate that contracts which restrict competition, are not necessarily in restraint of trade, and therefore, not embraced in the Federal act. The same arguments conclusively demonstrate that any law preventing all contracts which prevent competition, are infringements of the liberty of the citizen.

After reviewing the case which apparently condemns restriction of competition, Judge Sanborn says (page 70):

"But in none of thes- cases were they required to hold, and in none of them did they hold, as we understand the opinions, when

read, in relation to the facts of the cases respectively, that every restriction of competition by contracts of competing dealers or carriers was illegal."

The learned judge then cites a score of cases in which contracts in restriction of competition are held to be illegal, and sustaining his opinion, "that it is not the existence of the restriction of competition, but the reasonableness of that restriction that is the test of the validity of the contracts that are claimed to be in restraint of trade."

This case is followed in Dueber Manufacturing Company *vs.* Howard Watch Company (66 Fed. Rep., 637).

"Excessive competition may sometimes result in actual injury to the public, and competitive contracts to avert personal ruin may be perfectly reasonable. It is only when such contracts are publicly oppressive that they become unreasonable, and are condemned as against public policy."

Also Leslie *vs.* Lorrillard (110 N. Y., 519), in which the court says:

"It does not think that competition — invariably a public benefaction, for it may be carried on to such a degree as to be an evil.

"It is perfectly legitimate to combine capital for all the mere purposes of trade for which capital may, apart from combination, be legitimately used in trade."

If this right to combine exists, the right to do ordinary business, such as fixing prices, changing prices, agreeing on productions, etc., must follow, and all these things constitute the liberty of the citizen.

The vice of the act in question is that it attempts to prevent too much; it does not stop at reasonable limits; it is not content with making criminal general restraint of trade, but it makes criminal all restrictions of trade. It is not content with affixing penalties to acts or contracts which reasonably restrict competition; it condemns any agreement or arrangement which prevents competition, between two or more persons entering into it. It not only prevents competitors from oppressing the public by unreasonable agreements as to production and prices; it also prevents persons associated in interest, joint owners and copartners, from making any agreement about their production and prices. It not only prevents persons from using their capital, skill and acts for the purpose of increasing prices; it reaches the very acme of absurdity in preventing persons from uniting their capital, skill and acts for the purpose of reducing prices. The legislature perhaps had in mind that which might possibly be a means of public oppression, to wit: the forced reduction of prices of articles which the combination or partnership purchased, but the act does not discriminate between articles purchased and articles sold. And it is because it does not so discriminate, because of the want of ordinary care in studying the meaning of words, that we have on the statute books of Texas at the close of the nineteenth century, during which combinations of capital and skill have cheapened the price of products to an extent unparalleled in the world's history, an act making it a highly penal

offense for two or more persons to unite their capital and skill for the purpose of reducing the price of the products which they undertake to manufacture and sell.

The next question is, Does this act of March 30, 1889, deprive any citizen or class of citizens of the equal protection of the law?

The fourteenth amendment of the Constitution in declaring that no State shall deny to any person within its jurisdiction the equal protection of the law imposes a limitation upon the exercise of all the powers of the State which can touch the individual or his property.

Whatever the State may do, it cannot deprive any one within its jurisdiction of the equal protection of the laws, and by "equal protection of the laws" is meant equal security under them to every one under similar terms—in his life, his liberty, his property and in the pursuit of happiness. It not only implies the right of each to resort on the same terms with others to the courts of the country for the security of his person and property, the prevention and redress of wrongs and the enforcement of contracts, but also his exemption from any greater burdens and charges than such as are equally imposed upon all others under like circumstances.

This subject of equality before the law is a fundamental principle of English and American liberty, which not only has been held sacred in all latter-day constitutions, State and Federal, but the principle has been guarded by the courts with jealous watchfulness, to see that the citizen may have guaranteed to him this inestimable privilege and condition. (Barber *vs.* Conley, 113 U. S., 27; Yick Wo *vs.* Hopkins, 118 U. S., 356; Bent *vs.* West Virginia, 129 U. S., 114; *Ex parte* Virginia, 100 U. S., 339; Duncan *vs.* Missouri, 152 U. S., 382.)

The Supreme Court of the United States in an unanimous opinion on the equality of the citizens in Dent *vs.* West Virginia, above, says:

"The great purpose of the requirement — to be that it shall exclude everything arbitrary or capricious in legislation affecting the rights of the citizen." The same court speaking through Justice Matthews in Yick *vs.* Hopkins, *sup.*, says:

"When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power."

And the same court in Barber *vs.* Conley put the same thought in the following language:

109 "These provisions are undoubtedly intended that there should be no arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights. That all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement

of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of justice, no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

We do not mean to say by this that the State of Texas does not have the power to prescribe regulations to promote the health, peace, morals, education and good order of its people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity. From the very necessities of society, legislation sometimes of a special character having these objects in view, must obtain in certain districts, and special burdens are sometimes necessary for general benefits, such as for supplying water, preventing fires, lighting districts, clearing streets, opening parks and many other objects. As said by the courts, occasions for these purposes may press with more or less weight on one than upon another; but they are designed not to impose unequal or unnecessary restrictions upon any one, but to promote with as little inconvenience as possible, the general good. Though in many respects, necessarily special in their character, these in proper limitations do not furnish just ground of complaint, if they operate alike upon all persons and property under the same circumstances and conditions.

This statute under discussion is clearly class legislation, discriminating against some and favoring others. It is not that character of legislation which, in carrying out a public purpose, is limited in its application and within the sphere of its operation, affects alike all persons similarly situated. It may affect and does affect individuals of the same class in an opposite way. It favors some individuals of a certain class, and denounces other individuals of the same class. This statute exempts no class. On the contrary, it seeks to exempt certain classes of property, which is carrying the doctrine beyond any case to which we have had access. All property in the State is entitled to equal protection, and no special property is entitled or ought to receive any special favors. Discrimination may be as patent against the citizen in the direction of his property as if aimed directly against himself personally. The right to hold or sell property, and to make agreements and contracts concerning it, which may be believed by the owner to be for his betterment, is the most essential right of property. With some citizens this right is taken away, with others it is encouraged.

But it is contended upon the part of the State that the act is valid in restraint of trade on the ground of public policy; that the combinations in restraint of trade are public acts, an additional reason against the law in this particular, that if that be true, all of the acts in restraint of trade are not public, but many of them are private, and when we look closely to the object of the act, it will be seen that the business of the farmer in growing vegetables, grain, cotton, wool or meat is no more of a private occupation than that of the

shoemaker, the blacksmith or the bricklayer. If the anti-trust act of 1889, under discussion, applied only to those occupations where the business implies a trust of public duty, such as railways, telegraphs, telephones, etc., then the argument might be plausible that it is not class legislation, but such is not the case; the penalties are visited not only upon those exercising a public trust or duty, but upon the body of private citizenship composed of artisans, mechanics, professional men, traders and the like, giving advantage to certain persons that it refuses to others.

Judge Simkins in the case of Railway *vs.* Willson, 19 S. W. Rep., 913, in discussing this question, said:

"In those occupations where the business implies a trust or public duty, the Government has the power to see that the trust is not disturbed, and the duty is properly performed. On this principle statutes have been upheld that regulate the charges of railway companies, elevator, telephone, telegraph and other companies, hackmen, warehousemen, mills, etc., but we are aware of no well-considered case on which a statute has been upheld that undertook to regulate the dealings between employer and employé."

The exemption of agricultural products in the hands of the original producer and raiser, exempts, upon a rough estimate, four-fifths of the people of Texas from the operation of this act, because four-fifths of the people of Texas are engaged in the business of producing and raising agricultural products and live stock. The penalties are visited upon the remaining one-fifth of the people without regard to any particular class. This one-fifth comprises all classes and conditions not heretofore exempted. And this, in the face of the constitutional guarantees, State and Federal, of perfect equality of the citizens before the law. Even in the matter of labor, the iniquitous character of the enactment under discussion is apparent. This statute makes no exemption of labor or of the products of labor. Under its terms and provisions the laborer is subjected to punishment for doing the very act that the land-owner or farmer is authorized to do. The original producer, if a farmer, has authority to combine to fix prices, restrict trade, build up monopolies, while the original producers in other lines of labor are denounced for combining. The agricultural products of the farmer are the fruits of his labor, but no more so than the manufactured articles of the workingman are the fruits of his labor. The blacksmith, the carpenter, and all other artisans purchase their raw material, and the manufactured products constitute the fruits of the labor, and upon which they must rely for the sustenance of themselves and families, just as the agricultural products of the farmer constitute the fruits of his labor, and upon which he relies for similar purposes; yet the statute prescribes total inequality between these classes, and encourages the one to build up monopolies while denouncing the others, if they make any attempt in the same direction. Or, to apply the provisions of the statute to the matter of live stock, from which application this inequality becomes still more apparent, the cattle king may raise his thousands of head of live stock each year, and so long as this stock remains in his hands,

he can combine, not only with his neighbors, but with all other similar original producers throughout the State of Texas, or even throughout the United States for the purpose of fixing the prices and monopolizing markets. Not so, however, with the hands which he employs, and which constitutes the ordinary labor of the ranch. The fruits of the labor of the latter class are his day's work. This may be paid him either in money, which he invests in stock, or it may be paid him in stock, or shares, or otherwise, and yet, not being the original producer, he is forbidden to make any combination of any character whereby the price of the fruits of his labor can be promoted or regulated in any manner whatsoever. These common laborers on the ranch can form no agreement among themselves whereby they can combine with other ranch-owners with reference to the prices of their products which constitute the fruits of their labor. The demonstration can be carried to a further absurdity by simply calling attention to the fact that under the terms of the statute the farmer or stock-raiser may combine with any person, firm or corporation whomsoever, or any number of them in respect to agricultural products he has produced, or the live stock he has raised, without fear of punishment under the law, and yet, the party, or parties with whom he makes such a combination, may be held liable to all the penalties denounced against such combinations. Two citizens may combine, therefore, for the purpose of fixing prices, one by doing so committing a crime, and the other by doing so, performing a laudable act. If this is equality before the law within the meaning of the Constitution, we had better revise the Constitution.

All of the decisions hold that where a distinction is necessary in classes or citizens under the law, that in every instance, the classification must be reasonable.

What ground can there be for setting aside as this act has done, four-fifths of the citizens of Texas as an exempt class from the punishment for felony because they are producing farmers? It is not because they are poor, and if some of them are, they do not constitute all of the poor; it is not because of the character and location of their occupations, neither can it be said to be on account of the lack of intelligence or ability to take care of themselves; it cannot be on account of the character of the products they produce, for one of the avowed purposes of the act was to prevent combinations and injury to the people of the State; to protect them in their acquirements of the commodities necessary for the enjoyment and sustenance of life, and yet the act puts it within the power of the men who produce nearly all of these articles to combine and raise the price and control it in any way they please. But it is argued that on account of the large district of the country over which they are distributed, that they cannot combine, and therefore, it would have been useless to include them within the prohibition of the act.

While there was no evidence before the court on this subject, we were asked to take judicial notice of the fact; we hardly find the allegation correct. The Swine Breeders' Association of the State of Texas, the proceedings of whose meetings are published in the pub-

lic press of the country, the enormous wealth of the cattle-raiser, the efforts, most energetic, of the cotton-grower to limit the acreage by a combination with his fellows for the purpose of decreasing the quantity and thus raise the price to the consumer, are well known everywhere. But if it should be true that the producing agriculturists do not have the power to combine, what reason is that, that he should be excluded from the penalty prescribed for combining? This is a strange proposition, indeed; yet it is gravely argued in this tribunal by the representatives of the State, that the principal reason for granting to so large a body of citizens absolute immunity from punishment for felony for combining in restraint of trade, is the fact that they are utterly unable to avail themselves of the great privilege thus granted. The court apprehends that this would not be accepted as a valid reason anywhere. Nor can it be successfully contended that the proposition is correct, that the producing agriculturist is unable to combine nor that he has any privilege or rights on account of his location or occupation.

We are familiar with the duties of the farmer, and the cares and trials of his business life, and appreciate highly the customary compliments paid by mankind to the rural yeomanry of the land; he has been justly lauded for his integrity and for the independence and importance of his calling; without the products of his toil people cannot live, nor society endure; yet, what is there about it all to entitle him to the privilege of combining in restraint of trade as to these articles he produces, while his neighbor, the storekeeper and mechanics are precluded therefrom, and he himself is debarred from engaging with the same exemption from bartering in the products of his neighbor.

If there is any one thing evident from a careful study of the act, it is that it is aimed to favor the agricultural class, and is against the merchant and mechanic and all the others, without either reason or justice.

I apprehend that it will not be questioned that the business of merchandising is not only legitimate, but laudable. Millions of people of this and other lands have made and are making their honest living and millions more are being accommodated and served thereby. Great empires, both ancient and modern, have built their strength and glory on their trade, and today we have great arteries of steel transportation pulsating across the continent and white-winged fleets of commerce traverse the seas. They not only carry the fruits of the labor of the agriculturist, but what would he and the fruits of his labor be worth without them? The merchant, the manufacturer, the agriculturist—three great classes of the world, each dependent upon the other, each entitled to the same protection before the law, each justly claim alike under the Constitution the right of life, liberty and property; they constitute one mighty people, citizens of one Republic, all deserving of our care, all governed by the same laws, whose rights shall be weighed in the same balance that shall not swerve a hair's breadth in favor of either while being held by the blind goddess of Justice.

Although the reasons alleged in support of the act by the State

are inapplicable and invalid and do not properly state the purpose for which the act was really passed, of course there was a purpose behind so important a piece of legislation—one that formulated the thing and procured its passage. Such a purpose is patent upon its face and is apparent from the history of the act. It is a purpose thoroughly appreciated by the court, and recognized by the public, but it is such a purpose that the Constitution of the United States will not support nor the courts thereof favor.

The court can find no better language in this connection—almost prophetic in some respects—than that used by Judge Catron of Tennessee in two early cases, viz., Wally *vs.* Kennedy, 2 Yerger, 555, and Van Zandt *vs.* Waddell, same volume, 270:

"The rights of every citizen must stand or fall by the same rule of law that governs every other member of the body politic, or land under similar circumstances; and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences is unconstitutional and void. Were it otherwise, odious individuals or corporate bodies would be governed by one law, the most of the community, and those who made the law, by another; whereas a like and general law affecting the whole community equally could not have been passed.

"The idea of people through their representatives making laws whereby are swept away the life, liberty and property of one or a few citizens by which neither the representatives nor their other constituents are willing to be bound, is too odious to be tolerated in any government where freedom has a name. Such abuses resulted in the adoption of the Magna Charta in England, which is and for centuries has been the foundation of English liberty. Its infraction was a leading cause why we separated from that country, and its value as a fundamental rule for the protection of the citizen against legislative usurpation was the reason of its adoption as a part of our Constitution."

This law that deprives the citizen of many of his rights of contract and that seeks to divide citizens, not exactly by the calling they follow, but by the source of the property they hold, and exempts 80 per cent. of them from the penalties it visits upon the remainder, is not sustained by any good reason or excuse, is not just, is utterly without support in law and can have no just purpose, is vicious class legislation, depriving the citizen of his constitutional right of life, liberty and property, without due process of law, contrary to the law of the land, and is therefore declared to be null and void.

The relator is discharged.

110 *Orders Entered in U. S. Circuit Court at Dallas Discharging the Relator.*

Ex Parte WM. GRICE, Relator; JOHN W. BAKER, Respondent. 2062.

FEBR'Y 22D, 1897.

On this day the above styled and numbered cause came on to be further heard and considered, the same having been argued and submitted at a former day of this term, and thereupon it was ordered and adjudged by court, for the reasons stated in the opinion herein filed, that the relator, Wm. Grice, be, and he is hereby, finally discharged upon the writ of *habeas corpus* herein granted, and that he, the said Wm. Grice, do have and recover of the respondent, John W. Baker, all his costs in this behalf expended, for which let execution issue.

111 *Bill of Exceptions of the Respondent.*

In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

Ex Parte WM. GRICE; JOHN W. BAKER, Sheriff McLennan County, Texas, Respondent. No. 2062.

Respondent's bill of exceptions.

Be it remembered that on the trial of the above entitled and numbered cause the following proceedings were had therein:

Relator presented to the court his petition for a writ of *habeas corpus*, respondent presented his amended return on the writ of *habeas corpus*, both of which are set out in this record, and, by agreement of the parties made in open court, are to be marked respectively Exhibits "A" and "B," and are to be considered as incorporated in this bill.

The relator then offered the following evidence:

1st. The writ of *habeas corpus* set out in this record and, by agreement of the parties in open court, to be considered as incorporated in this bill.

2nd. The original indictment against the relator and others filed in the district court of McLennan county, Texas, set out in the record, and, by agreement of the parties made in open court, is to be considered as incorporated herein.

3rd. All of the exhibits attached to plaintiff's petition for writ of *habeas corpus* which are set out in the record and for the purpose of this bill are, by agreement of the parties made in open court, considered as incorporated herein.

4th. An extract from the report of the Commissioner of Agriculture, statistics and history of the State of Texas, which is incorporated in the record and considered as a part hereof. To the admission of this extract from said report the counsel for the respondent objected on the following grounds:

112 First. Because same was incompetent.

Second. Because the statistics of which it constituted a part were not required to be gathered by the laws of Texas; all of which objections were by the court overruled and said extracts from the statistics admitted; to which ruling and action of the court the respondent then and there in open court excepted.

5th. The relator also offered in evidence an extract from the census report of 1890, which is set out in this record, by agreement of the parties made in open court is considered a part hereof; to the admission of which the respondent objected on the ground that the *the* same is incompetent, irrelevant, and not properly authenticated.

6th. The relator read in evidence the original return of the respondent, which is incorporated in the record and, by agreement of counsel, is to be considered a part hereof.

7th. The respondent read in evidence his amended return, which is set out in the record and marked Exhibit "B" and made a part hereof, together with all of the exhibits thereto attached.

8th. The respondent also read in evidence the admission of defendant, in substance and effect, that he was out on bail and not confined in prison until the day the application for *habeas corpus* was made, and that his counsel, with his consent, requested said sureties to surrender him to respondent, the sheriff of McLennan county, Texas, in order that the writ of *habeas corpus* might be sued out.

After hearing all of the evidence the court did on the 22nd day of February, 1897, render an opinion, holding, first, that the writ of *habeas corpus* was properly granted, and that this court properly exercised jurisdiction in this proceeding; second, that the circumstances surrounding this case were of such urgent character in the discretion of the court as to justify the issuance of the writ of *habeas corpus* in this case and to determine the rightfulness of the discharge of the prisoner before trial had in the State court on the merits of the case; third, that the statute under which said relator stands indicted is void because enacted in violation of the Constitution of the United States, in that it denies to certain persons equality
113 before the law and is particularly violative of the 14th amendment to the Federal constitution, all as set forth in the opinion of the court. Said court also entered an order discharging said relator, which order was entered on the 22nd day of February, 1897; to which action and judgment of the court, as well as to all of the actions and orders above mentioned, including the admission of testimony over respondent's objections, the respondent then and there in open court excepted, and now prays that this bill of exceptions be allowed, signed, sealed, and filed as a part of the record herein, and that the petition for writ of *habeas corpus*, the *habeas corpus*, the amended return of the respondent and all exhibits thereto, the opinion of the court, above described, as well as all other documents in this bill of exceptions mentioned, including the order of the court discharging said relator and the recognizance into which this court has ordered him to enter, the appeal bond,

which is herewith filed, and assignments of error, to be hereafter filed, as a part of this record in this case and a part of this bill, in conformity to the agreement of counsel, made in open court.

All of which is accordingly done.

Done this 22d day of February, 1897.

CHAS. SWAYNE, *Judge.*

The foregoing has the following endorsement, to wit:

Ex parte Wm. Grice; J. W. Baker, sh'ff, &c., respondent. Bill of exceptions. No. 2062. Filed Feb. 22, 1897. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

114 *Recognizance.*

Ex Parte WM. GRICE, Relator; JOHN W. BAKER, Respondent. 2062.

FEBR'Y 22, 1897.

On this day came into open court Wm. Grice, as principal, and J. E. Schneider and Kane Shields, as sureties, and jointly and severally acknowledge themselves to owe and to be indebted unto the United States of America in the sum of one thousand ($1,000.00) dollars; for the payment of which, well and truly to be made, they bind themselves, their heirs and legal representatives.

To be void, however, upon condition that the said Wm. Grice, principal, pending the final determination of the issues herein, will appear at the present term of this court, at Dallas, Texas, and from day to day and term to term hereafter, and then and there stand to, abide by, and perform the order, direction, and judgments of this court in this case; otherwise this obligation to be and remain in full force and effect.

115 *Respondent's Petition for Appeal, Allowance Thereof, and Waiver of Citation, &c.*

In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

Ex Parte WM. GRICE; JOHN W. BAKER, Sheriff of McLennan County, Texas, Respondent. No. 2062.

The above-named respondent, John W. Baker, sheriff of McLennan county, Texas, conceiving he is aggrieved by the order entered on February 22nd, 1897, in the above-entitled proceeding, doth hereby appeal from said order to the Supreme Court of the United States, and he prays that this his appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

CULLEN F. THOMAS AND
M. M. CRANE,
Attorneys for Respondent and Applicant, John W. Baker, Sheriff of McLennan County, Texas.

The issuance and service of citation on above application for appeal are hereby specially waived.

WM. GRICE,
By GEO. CLARK, *Att'y.*

The above application for appeal to the Supreme Court of the United States is on this day, to wit, February 22nd, 1897, allowed as prayed for, upon said respondent entering into bond, within the time and conditions as the law requires, in the sum of two hundred and fifty dollars, payable to relator.

CHAS. SWAYNE, *Judge.*

The foregoing has the following endorsement, to wit:
No. 2062. *Ex parte* Wm. Grice. Petition for appeal, allowance thereof, and waiver of citation, &c. Filed Feb. 22, 1897. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

116 *Appeal Bond of John W. Baker.*

In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

No. 2062. *Ex Parte* Wm. Grice.

Know all men by these presents that we, John W. Baker, sheriff of McLennan county, Texas, as principal, and Ben. E. Cabell and J. S. Lewis, as sureties, are held and firmly bound unto Wm. Grice, appellee herein, in the full and just sum of two hundred and fifty ($250.00) dollars, to be paid to the said Wm. Grice, appellee, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 22nd day of February, A. D. 1897.

Whereas, on this day, in the circuit court of the United States for the northern district of Texas, in a suit pending in said court between Wm. Grice, relator, and John W. Baker, respondent, sheriff of McLennan county, Texas, an order and judgment was rendered against the said respondent, sheriff of McLennan county, Texas, in a proceeding of *habeas corpus*, and the said relator was, by said order and judgment, discharged and released from the custody of said respondent, who held him in charge as sheriff of McLennan county, Texas; which said judgment and order was rendered against the said John W. Baker, sheriff as aforesaid, and the said John W. Baker, sheriff, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse said judgment and order in the aforesaid suit, and issuance and citation having been specifically waived by the said relator, citing and admonishing him to be and appear at a session of the United States Supreme Court:

Now, the condition of the above obligation is such that if the said John W. Baker, sheriff of McLennan county, Texas, shall prosecute

his said appeal to effect and answer all damages and costs if
117 he fails to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

J. W. BAKER.
BEN. E. CABELL.
J. S. LEWIS.

Above bond taken and approved this 22nd day of February, 1897.

CHAS. SWAYNE, *Judge.*

The foregoing has the following endorsement, to wit:
No. 2062. *Ex parte* Wm. Grice. Appeal bond. Filed Feb'y 22, 1897. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

118 *Assignment of Errors.*

In the Supreme Court of the United States, A. D. 1897.

Ex Parte WM. GRICE; JOHN W. BAKER, Sheriff of McLennan County, Texas, Respondent. No. 2062.

In re application of Wm. Grice for writ of *habeas corpus.*

Now at this time comes the respondent, and, in connection with his application for appeal this day granted, makes the following assignment of errors, which, he avers, occurred upon the trial of this cause, to wit:

1. The court erred in admitting in evidence over the objection of respondent an extract from the report of the Commissioner of Agriculture—Insurance, Statistics, and History of Texas—showing the number of farmers in Texas, because the same was incompetent, irrelevant, and for other reasons set forth in the bill of exceptions.

2nd. The court erred in admitting in evidence an extract from the report of the census of 1890 and the statistic- therein because same was incompetent and not properly authenticated, was irrelevant and immaterial, said extract showing in substance the number of farmers and stock-raisers in the United States.

3. The court erred in holding, in his opinion delivered on the trial, that the writ of *habeas corpus* had been properly granted, and that the circuit court of the United States could properly exercise jurisdiction in this proceeding in advance of the trial by the State court.

4. The court erred in holding in substance that the trial of Hathaway, who had severed from the other defendants, was virtually the trial of this relator.

5. The court erred in discharging the prisoner and not remanding him to the State courts for trial in order that he might pursue his legal and orderly remedy so often pointed out by the Supreme Court, viz., the writ of error, in the event the State court should decide against him.

119 6. The court erred in holding that the Texas statute under which relator was being prosecuted violates any portion of the Constitution of the United States and denies to any person equality before the law, and that it is in any sense violative of the 14th amendment to the Federal Constitution.

7. The court erred in holding that the statute was void because in restraint of the personal liberty of the citizen to enter into such contracts as to him might seem fit.

8. The court erred in attributing to the legislature any motive other than that of the public good in undertaking to prevent agreements in restraint of trade that were hurtful to society.

9. The court erred in holding in effect that the passage of this law did not involve the exercise of the police power of the State in undertaking to prohibit contracts in restraint of trade, which the experience of generations has proven to be hurtful to the community.

10. The court erred in holding that the exemption of agricultural products while in the hands of the persons producing them, and the exemption of live stock while in the hands of those who raised them, invalidated the statute, because said exemption is such an one as properly addressed itself to the legislative discretion and was not an arbitrary discrimination in favor of or against any class.

11. The court erred in not holding as a matter of law that the agreements made among producers and those who raise live stock, if any such have been made in restraint of trade, were not injurious to the general public, and therefore this statute exempting them from the penalties was not an arbitrary use of legislative power.

12. The court erred in entering judgment in favor of the relator and discharging him from the custody of the respondent.

CULLEN F. THOMAS,
M. M. CRANE,
Attorneys for Respondent.

The foregoing has the following endorsement, to wit:
No. 2062. *Ex parte* Wm. Grice. Assignment of errors. Filed Feb. 22, 1897. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

120 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable judges of the circuit court of the United States for the northern district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said circuit court, before you or some of you, between William Grice, relator, and John W. Baker, sheriff, respondent, a manifest error hath happened, to the great damage of the said John W. Baker, sheriff, respondent, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment

be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington in not exceeding thirty days from February 22nd, 1897, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 22nd day of February, in the year of our Lord one thousand eight hundred and ninety-seven, and of American Independence the 121st year.

J. H. FINKS,
Clerk of said Circuit Court of the United States for the Northern District of Texas,
By CHAS. H. LEDNUM, *Deputy.*

Allowed by—

CHAS. SWAYNE,
U. S. District Judge.

[Endorsed:] Filed Feb. 22, 1897. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

121 *Clerk's Certificate.*

I, J. H. Finks, clerk of the circuit court of the United States in the fifth circuit and northern district of Texas, do hereby certify that the above and foregoing is a full, true, and correct transcript of the record, bill of exceptions, assignment of errors, and all proceedings had in cause No. 2062, wherein William Grice is relator and John W. Baker, sheriff, is respondent, except that the original writ of error (citation in error being waived) is included therein instead of a copy thereof, as fully as the same remains on file and of record in my office, at Dallas, Texas.

Witness my hand officially and the seal of said court, at Dallas, Texas, this the 5th day of March, A. D. 1897.

[The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.]

J. H. FINKS, *Clerk,*
By CHAS. H. LEDNUM, *Deputy.*

122 In the Supreme Court of the United States.

JOHN W. BAKER, Sheriff, etc., Appellant,
vs.
WILLIAM GRICE, Appellee.

JOHN W. BAKER, Sheriff, etc., Appellant,
vs.
F. A. AUSTIN, Appellee.

JOHN W. BAKER, Sheriff, etc.,
vs.
W. E. HAWKINS, Appellee.

JOHN W. BAKER, Sheriff, etc., Appellant,
vs.
ARTHUR M. FINLEY, Appellee.

The above four cases are based upon the same facts and upon the same statute. The decision of one will necessarily decide every question in each of the others. It is therefore hereby agreed and stipulated by and between appellant and all of appellees therein that the record in one case only may be printed, and that the other three cases be tried at the same time and on the same date with the one in which the record shall be printed, subject to the approval of the court and without prejudice.

M. M. CRANE,
Counsel for Appellant.
GEO. CLARK,
Of Counsel for Appellees.

123 [Endorsed:] Case No. 16,537, &c. Supreme Court U. S., October term, 1896. Term Nos., 758, 759, 760, 761. Jno. W. Baker, sheriff, &c., app'l't, *vs.* William Grice; same *vs.* Austin; same *vs.* Hawkins, and same *vs.* Finley. Stipulation that one record only be printed & that the other three cases abide decision in that case. Filed Mar. 25, 1897.

Endorsed on cover: Case No. 16,537. N. Texas C. C. U. S. Term No., 758. John W. Baker, sheriff of McLennan county, Texas, appellant, *vs.* William Grice. Filed March 25, 1897.